INDEX

	Page
Docket Entries	1
Complaint, filed October 9, 1970	19
Answer of defendants, filed November 5, 1970	23
Order convening three-judge district court, filed December 21, 1970	26
Order requiring defendants to compile data and granting other relief, filed March 1, 1971	28
Plaintiffs' motion to supplement the record and order granting motion, filed August 9, 1971	31
Plaintiffs' motion for leave to supplement the record and order granting motion, filed May 15, 1972	39
Notation re Opinion and Judgment of the District Court	51

CIVIL DOCKET

UNITED STATES DISTRICT COURT

WC7053-K
JUDGE COLEMAN
JUDGE SMITH

Title of Case

Delores Norwood, by her father Calvin Norwood; Van Siggers, by his Mother Floy Gates Siggers; Audrey Shanda Woodward, by her father Henry King Woodward; Andrew Galloway, by his mother Gertrude Galloway Plaintiff

v.

D. L. Harrison, Sr., Jim C. Barnett, Irene Breland, Garvin Johnston, as members of the Mississippi State Textbook Purchasing Board; John Bell Williams, as ex-officio chairman of the Mississippi State Textbook Purchasing Board and M. A. Snowden, as Executive Secretary of the Mississippi State Textbook Purchasing Board

Attys. (Defendant)
Honorable Stovall Lowery 202 Coahoma Bank Building Clarksdale, Miss. 38614—Atty. for Mrs. L. Wright Prin. of Clarksdale Baptist School

Honorable Elzy Smith 123 Court Street, Clarksdale, Miss. —Atty. for Norman E. Harper, Head master of Presby. Day School

Honorable Tom Ross, Bobo Ins. Bldg., Clarksdale, Miss.— Atty. for Mrs. George Bounds, Prin. of St. George's Espic. Day School

Honorable William Luckett, P.O. Drawer 119, Jackson, Mississippi 39205, Atty. for Sister Eliz. J. Fracchia, Prin. of St. Elizabeth School

Hon. Semmes Luckett, Atty. at Law, Clarksdale, Miss. Atty. for Gene L. Barbour, Principal of Lee Academy & Rebecca H. Walton, Principal of Lula-Rich Academy

Attorneys

For plaintiff:

Hon. Melvyn R. Leventhal, Hon. Fred L. Bank, Hon. Reuben V. Anderson, Hon. John A. Nichols, Hon. 538½ North Farish Street, Jackson, Mississippi 39202

Hon. Robert J. Kelly
113 Wood Street
Batesville, Mississippi 38606

Hon. Jack Greenberg, Hon. Norman Chachkin
Suite 2030
10 Columbus Circle
New York, New York 10019

For defendant:

Hon. Jesse R. Adams, Jr., Spec. Asst. Atty. Gen., Dept. of Justice, Office of the Attorney General, Jackson, Miss. 39205

Hon. Harvey S. Buck, 203 Jordan Ave., P.O. Box 514, West Point, Miss. 39773—Atty., for Frank Chiles, Headmaster, Oak Hill Academy

Hon. Taylor B. Smith, 215 Fifth St., Box No. 1366, Columbus, Miss. 39701 —Atty. for East Lowndes Educ. Foundation, Inc., G.T. Buckley

Hon. Wm. R. Bradley, P.O. Box 488, Clarksdale, Miss. 38614, Atty. for United Methodist School Principal, Mrs. Betty Cantwell

Hon. Frank K. Odom, P.O. Box 1218, Greenwood, Mississippi 38930—for Greenwood Private Jr. High School

Hon.s Lott, Sanders & Gwin, P.O. Box 1176, Greenwood, Miss. 38930—for B. Taylor, Carroll Academy

Hon.s Fraiser & Burgoon, P.O. Box 391, Greenwood, Miss. —for Seth Dillon, Pillow Academy, Greenwood, Miss.

Hon. P. J. Townsend, Jr., Townsend & McWilliams, Drew, Miss. 38737—for North-Sunflower County Foundation,

Hon. William Ward, Box 59, Starkville, Miss. 39759—for Starkville Academy

Date	Proceedings
10-13-70	Filed Complaint. Issued Summons, handed same to Marshal. Notice of Judge Keady's assignment to case mailed to counsel. A-0 78 to Courtroom Deputy.
10-14-70	Filed Motion for Leave to File Request for Admissions—copy to Law Clerk.
10-28-70	Filed Process of Summons by Marshal's return —exec.—D.L. Harrison, Sr., Calhoun City, Has Filed Process of Summons by Marshal's return —exec.—the following at Jackson, Miss. Miss Irene Breland, Garvin Johnston, M.A. Snowden, and Gov. John Bell Williams. Filed Process of Summons by Marshal's return —exec.—Jim C. Barnett, Gulfport, Miss.
10-30-70	Filed Motion for Leave to Take Deposition Upon Oral Examination. Copy to Law Clerk.
11-3-70	Filed Notice of Motion—copy to Law Clerk.
11-5-70	Filed Answer of Defendants. Copy to Law Clerk.
11-17-70	Filed Notice of Withdrawal of Motion for leave to take Deposition Upon Oral Examination dated Oct. 29, 1970 under Rule 30. Copy to Law Clerk.
11-19-70	Entered Order signed by Judge Keady on 11-18-70, sustaining Motion for leave to file Request for Admissions, has been entered in Civil Order Book 20, pages 34 & 35. Notices sent to attorneys. Filed Request For Admissions.
11-27-70	Filed Response to Request for Admissions.
11-30-70	Filed Notice of Motion. Filed Motion to Convene a Three Judge District Court—copy to Law Clerk.
12-14-70	Filed Notice of Deposition Upon Oral Examination Copy to Law Clerk.
12-21-70	Filed and entered Order signed by Hon. John Brown, Chief Judge, designating Judge James P. Coleman and Judge Orma R. Smith to serve with Judge Keady, to hear and determine the Action. C. O. B. 20, pages 91 & 92. Copies of and Notices mailed to Counsel. Sent Copy to Complaint and Answer to Judge Coleman and Jud Smith. (Letter dated 12-16-70-received this date) Placed pleadings, sent with Order, in jacket file.

12-23-70	Placed letter in jacket file to Attorneys from Law Clerk requiring counsel to submit by Jan. 22, 1971, a stipulation.
	Placed letter in jacket file from Judge Keady to other two Judges Coleman and Smith, stating he was mailing each one a copy of everything in the above file.
1-25-71	Filed Deposition of Marshall Allen Snowden with attachments enclosed.
1-26-71	Placed letter in jacket file from Law Clerk to Attorney notifying him that he has until Feb. 4, 1971 to file stipulation of uncontradicted facts which court has ordered counsel to submit. (Leventhal—Attorney)
2-1-71	Filed Motion For Accounting and Notice of Motion. Copy to Law Clerk.
2-4-71	Filed Motion To Compel Answers To Request For Admissions Or In The Alternative Motion To Supplement The Record. Copy to Law Clerk. Mailed File to Greenville.
2-4-71	Placed letter in jacket file From Law Clerk (Hailman) to Attys/notifying them that a hearing will be held on all motions pending at 10 A. M. on Mon., Feb. 22, in Greenville
2-5-71	Filed Stipulation: Constested and Uncontested Issues of Fact and Law; Filed copy of each of the twenty stipulations entered into by parties. Copies sent to Judges, and Jesse R. Jr. Esquire
2-8-71	Filed Motion to Compel Defendants to Compile Date—copies to Judges by Attorney.
2-12-71	Placed letter in jacket file from Judge Keady to Attorneys setting conference with counsel for Feb. 22 following argument on Motions.
2-16-71	Filed Motion For Leave To Supplement The Record.
	Filed Notice Of Motion. Copy to Law Clerk.
2-23-71	Placed Courtroom Deputy Sheet in jacket file—that hearing on 4 Motions be sustained.
2-25-71	Filed Stipulation #21—copies to Law Clerks (Hailman & Dodson)

3-1-71	Entered Order signed by Judge Keady on 3-1-71, granting Plaintiff's Motion for Accounting, Motion to Compel Deft's. to Compile Data, Motion for Leave to Supplement the and Motion to Compel Answers to Request for Admissions or in the Alternative Motion to Sup the Record, has been entered in Civil Order 20, pages 167-170. Copy of Order sent to Counsel Notice of Entry Mailed.
3-4-71	Filed Deposition of Arthur Choate
	Filed Deposition of Delbert Ronald Coggins
	Filed Deposition of Glenn A. Cain
	Filed Deposition of Bernice Lowe and Joseph Emmett Logan
	Filed Deposition of William DeWitt Mosely
	Filed Deposition of D.B. Floyd
	Filed Deposition of Billy E. Daniels
	Filed Deposition of Bernard Waites
	Filed Deposition of Jimmy H. Isbell
3-5-71	Filed the following copies of depositions on the following: W.E. Boggan, John E. Collier, Lamar Fortenberry, Donald Hopper, Holace Morris, George F. Pettey, Carl Franklin Drake, Reverend Melvin R. Porter, Franklin Haire, Preston M. Cochran, Thomas H. Blakeney, A.E. McGahey, James Franklin Hughes, John O. Ethridge, James D. Stoddard, Alton Rogers Zachary.
3-11-71	Filed Deposition of Billye G. Dendy.
	Filed Deposition of Alton Roger Zachary
	Filed Deposition of Alton Roger Zachary
	Filed Deposition of Dr. James D. Gilbert
	Filed Deposition of M. E. Rhodes
	Filed Deposition of Diane Douglas Tanksley
	Filed Deposition of James Arthur Nowell
	Filed Deposition of Harry Eugene Horne
	Filed Deposition of John E. Manor
	Filed Deposition of Lawrence W. Owens
	Filed Deposition of Joe Sheppard
	Fied Deposition of David C. White
	Filed Deposition of Vivian M. Hood
	Filed Deposition of Henry A. Trotter

Filed Deposition of Mrs. Mava Taylor
Filed Deposition of Earl W. Edwards
Filed Deposition of Dewitt A. Dixon
Filed Deposition of William J. Simmons
Copies also sent to Judges.

3-15-71 Filed Notice of Depositions Upon Oral Examination. Deposition Subpoena To Testify or Produce documents ot Things Attached.

3-16-71 Placed letter in jacket file from Leventhal to U. S. Marshal, John H. Phillips and Mr. Garald K. Baldwin concerning change of date upon which the witnesses are to appear.

3-17-71 Filed Notice of Deposition upon Oral Examination—copy to Law Clerk.

3-23-71 Filed Motion to Quash Subpoena Duces Tecum on the following: Mrs. Betty Cantwell, Gene L. Barbour, and Rebecca H. Walton.

3-24-71 Filed Motion To Quash Subpoena Duces Tecum. Copy to Law Clerk.

3-22-71 Filed Motion to Quash Subpoena Duces Tecum (Mrs. George Bounds) copy already mailed to Law Clerk.

3-25-71 Filed Motion to Quash Subpoena Duces Tecum (Mrs. LaVenna Wright)—copy to Law Clerk.
Filed Copy of Motion to Quash Subpoena Duces Tecum (Norman E. Harper) original already mailed to Law Clerk. (with attachments attached).

3-25-71 Filed Stipulation #22. Copy to Law Clerk.

3-25-71 Filed Motion To Quash Subpoena Duces Tecum.

3-25-71 (Filed by J. Trawick, Clarksdale) on 24th. Copy mailed to Judge Keady.

3-25-71 Filed USM285 with Returns that Subpoena & Notice of Deposition were served on the following: Saint Elizabeth Catholic School by Sister Elizabeth Jean, First Presbyterian Day School by Dr. Norman Harper; First United Methodist School by Mrs. Cantwell; Lula Rich Academy by Rebecca H. Walton; St. George's Episcopal Day School by Mrs. George Bounds/; Gene L. Barbour, Principal, Lee Academy; Mrs. LaVenna Wright, Clarksdale Baptist School; Principal,

Happy Day School; Principal, Lula Rich Junior High School; all served on 3-15-71.

3-26-71 Filed Summary of Stipulations Entered By The Parties. Copy to Law Clerk.

3-26-71 Entered Order signed by Judge Keady on 3-24-71, Order Postponing Deposition of Norman E in Civil Order Book 20, pages 219 & 220. Copy of Order has been sent to Counsel. Notice of Entry Mailed.

4-2-71 Filed Motion to Appoint Court Reporters Filed Notice of Motion—copies of above to Law Clerk.

4-5-71 Filed Notice of Depositions Upon Oral Examination. Copy to Law Clerk.

4-6-71 Entered Order signed by Judge Keady on 4-5-71, Appointing Persons To Administer Oaths appointing Elizabeth Evans and Nancy West as officers authorized to administer oaths and take testimony of persons whose depositions have been or will be noticed, in Civil Order Book 20, page 227. Copy of the Order has been sent to Counsel. Notices of entry mailed.

4-15-71 Filed Motion to Quash or in the Alternative for Protective Order—copy to Judge by Attorney. Filed Motion to Quash Subpoena Duces Tecum —copy to Law Clerk.

4-15-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things exec. Headmaster of M & L Academy at Nettleton, Miss. on 4-12-71 Served Michael R. Garrett (Bennett DUSM)

4-15-71 Filed Process of Deposition Subpoena To Testify Or Produce Documents of Things by Marshals Return exec. Headmaster, Chickasaw Academy at Van Fleet, Mississippi, Howard C. Bowles on 4-12-71, Bennett DUSM.

4-15-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, North Mississippi Academy (Calvary Baptist Church) Mrs. Tom C. Stewart, on 4-15-71. Williams DUSM

4-16-71 Filed Process of Deposition Subpoena To Tes-

tify or Produce Documents or Things by Marshal's Return exec. Principal, Montgomery- Carroll Academy, Marion L. Branch, on 4-15-71. (Jones, DUSM) (Winona, Miss.)

4-16-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal of Kirk Academy, Allen R. Smithers, on 4-15-71 at Grenada, Miss., (Jones, DUSM)

4-16-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal of Grenada Lake Academy, William C. Jaudon, on 4-15-71 at Gore Springs, Mississippi. (Jones, DUSM)

4-16-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, Calhoun Academy, Mrs. Jeanett S. Mayhan, on 4-15-71 at Calhoun City, Mississippi. (Jones, DUSM)

4-16-71 Entered—Order signed by Judge Keady on 4-15-71, ordering that deposition subpoena noticed by Plaintiffs for April 20, 1971 at Aberdeen is stayed pending a consolidated hearing by the Court of numerous identical motions to quash depositions filed by officials of other private schools situated. Counsel will be given notice in the future of the time date & Place of hearing; in Civil Order Book 20, page 240 Copy of Order has been sent to Counsel. Notice of entry mailed.

4-16-71 Filed Process of Subpoena by Marshal's Return exec. HeadMaster, Starkville Academy Don Johnson on 4-13-71 at Starkville, Miss. (Phillips U.S.M.)

4-16-71 Filed Process of Subpoena by Marshal's Return exec. Principal We Care Academy, Faye Brant on 4-13-71 at Kosciusko, Miss. (Phillips USM)

Filed Process of Subpoena by Marshal's Return exec. Headmaster, Winston Academy, M. G. Turner, on 4-13-71 at Louisville, Miss. (Phillips U.S.M.)

Filed Process of Subpoena by Marshal's Return exec. Principal, French Camp, Miss. Sam Allan,

on 4-13-71 at French Camp, Miss. (Phillips USM)

Filed Process of Subpoena by Marshal's Return exec. Principle, Ministerial High School West Point, Miss. (William Robbins), on 4-12-71. (Phillips USM)

Filed Process of Subpoena by Marshal's Return exec. Principal Oak Hill Academy, Frank Chiles, on 4-12-71 at West Point, Miss. (Phillips USM)

Filed Process of Subpoena by Marshal's Return exec. HeadMaster, Pheba Academy, Mrs. Sarah Jackson, on 4-12-71 at Pheba, Miss. (Phillips USM)

Filed Process of Subpoena by Marshal's Return exec. Headmaster, East Lowndes Academy G. T. Buckley, on 4-12-71 at Steens, Mississippi. (Phillips USM)

4-19-71 Entered Order signed by Judge Keady on 4-16-71, ordering that the deposition and subpoena production of documents noticed by Plaintiffs for Mon. April 19, 1971 at 4 p.m. at Aberdeen, Miss. is stayed pending a consolidation hearing by Court of numerous identical to quash depositions filed by officials of other private schools similarly situated. Counsel will be given notice of time, date and place of hearing, in Civil Order Book 20, page 242. Copy of order has been sent to Counsel. Notice of entry mailed.

4-20-71 Filed Motion To Quash or in the Alternative For Protective Order. Copy to Law Clerk.

4-20-71 Filed Process of Deposition Subpoena To Testify or Produce Documents of Things by Marshal's Return exec. Headmaster of College Hill Academy, Mr. Adkins on 4-20-71 at Oxford, Miss. (DUSM Williams)

4-20-71 Filed Motion to Quash or in the Alternative for Protective Order—copy to Law Clerk.

4-21-71 Filed Motion To Quash Subpoena. (Mrs. Stewart, North Mississippi Academy) with Affidavit attached. Filed Notice of Motion. Copy to Law Clerk.

4-21-71 Filed Motion To Quash or in the Alternative For Protective Order. Copy to Law Clerk.

4-21-71 Filed Process of Deposition subpoena to testify or produce Documents or Things by Marshal return exec. Principal, Paynes Academy, Charleston, Miss. on 4-20-71. (Hasting DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Thing by Marshal's Return exec. Principal, West Tallahatchie Academy, Summer, Miss. on 4-19 (Hasting, DUSM)

Filed Process of Deposition Supbpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, Bayou Academy, Skene, Mississippi on 4-19-71. (Hasting,

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, North Central Mississippi Schools, (Enid Academy) Enid, Mississippi on 4-20-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal First Baptist Parochial, Batesville, Miss. on 4-20-71 (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, Presbyterian Day School, Cleveland, Miss. on 4-16-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, West Panola Schools, Inc., Batesville, Miss. on 4-20-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal Duncan Academy, Duncan, Miss. on 4-19-71 (Hasting DUSM)

4-22-71 Filed Motion To Quash Subpoena Duces Tecum in behalf of Mrs. Weems, Principal of Paynes

Academy, Charleston, Miss. Sent copy of motion to Hon. Levanthal and Hon. Judge Keady.

4-22-71 Filed Motion To Quash Subpoena Duces Tecum in behalf Lamar Leggett, Principal of West Tallahatchie Academy, Summner, Miss. Attorney mailed copy of Motion to Hon. Levanthal and to Hon. Judge Keady.

4-22-71 Entered Order signed by Judge Keady on 4-21-71, ordering that taking of certain deposition and subpoena issued pursuant thereto directed to Greg Adkins is hereby stayed until further order of this court, in Civil Order book 20, page 245. Copy sent to Counsel. Notice of entry mailed.

4-22-71 Filed USM-285 (Marshals Form) of Deposition Subpoena To Testify Or Produce Documents or Things with return unexecuted Principal, Lighthouse Christian Academy, Olive Branch, Miss. Notice of Depositions Upon Oral Examination attached.

4-22-71 Filed Process of Deposition subpoena To Testify or Produce Documents or Things by Marshals return exec. Headmaster, Northwest Academy, Arkabutla, Miss. on 4-21-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's return exec. Principal, Highway Baptist Parochial Academy, Southhaven, Miss. on 4-21-71(?) (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, Magnolia Heights Schools, Senatobia, Miss. on 4-21-71. (Hastings, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, Hillcrest Academy on 4-21-71. (Hasting, DUSM)

4-22-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Headmaster, Leland Academy, Leland, Miss. on 4-21-71. (Baldwin DUSM)

Filed Process of Deposition Subpoena To Testify

or Produce Documents or Things by Marshals Return exec. Headmaster, Washington School, Greenville, Miss. on 4-21-71 (Baldwin DUSM)

4-26-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, Carroll Academy, Carrollton, Mississippi on 4-23-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, Greenwood Private Jr. High School, Greenwood, Miss. on 4-23-71. (Hasting, DUSM)

Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, Pillow Academy, Greenwood, Mississippi on 4-23-71. (Hasting, DUSM)

4-26-71 Filed Motion For Order That Deposition Not Be Taken on behalf of Bernard Taylor, Principal of Carroll Academy, with attachments. Copy to Law Clerk.

Filed Motion To Quash Subpoena on behalf of Bernard Taylor with Affidavit and attachments. Copy to Law Clerk.

Filed Motion To Quash Subpoena on behalf of Seth Dillon, Principal of Pillow Academy. Copy to Law Clerk.

Filed Motion For Order That Deposition Not Be Taken on behalf of Seth Dillon, Pillow Academy. Copy to Law Clerk.

4-26-71 Filed Motion For Order That Deposition Not Be Taken on behalf of Robert Leon Holly, Principal of Greenwood, Private Jr. High School. Copy to Law Clerk.

Filed Motion To Quash Subpoena on behalf of Robert Leon Holly, Principal of Greenwood, Private Jr. High School. Copy to Law Clerk.

4-27-71 Filed Motion To Quash Subpoena Duces Tecum on behalf of Joe Thomas, Headmaster of North Sunflower County Foundation, Inc. Copy to Law Clerk.

Filed Motion To Quash Subpoena Duces Tecum on behalf of Joe Thomas, Headmaster of North

Sunflower County Foundation, Inc. Copy to Law Clerk.

4-27-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return exec. Principal, Greenville Christian Day School, Greenville, Miss. on 4-26-71, (Hasting, DUSM)

4-27-71 Filed Process of deposition Subpoena To Testify or Produce Documents or Things by Marshals' Return exec. Headmaster, North Sunflower Academy, Ruleville, Mis. on 4-26-71 (Hasting, DUSM)

4-27-71 Filed Process of Deposition Subpoena To Testify or Produce Documents or Things by Marshal's Return Headmaster, Central Delta Academy, Inverness Baptist Church on 4-26-71. Returned *Unexecuted*, Could not locate school. (Hasting, DUSM)

4-28-71 Filed Motion To Quash Subpoena Duces Tecum on behalf of Don Johnson, Starkville Academy. Copy to Law Clerk.

5-11-71 Placed Notice of Hearing on Pending Motions To Quash Depositions in jacket file. Mailed to Counsel Concerned. (Positively No Continuance)

5-13-71 Entered Order signed by Judge Keady on 5-12-71, ordering that William O. Luckett have permission to withdraw as said counsel for Sister Elizabeth Jean Fracchia, Principal of St. Elizabeth School. Mailed Copy to Hon. Leventhal. Notice of Entry Mailed. COB 20, page 261.

5-17-71 Filed Motion To Quash Subpoena Duces Tecum. Copy to Law Clerk.

Filed Notice of Motion.

5-21-71 Entered Order, signed by Judge Smith on 5-20-71, staying notices and subpoenas to compel private sch. officials to appear and be deposed outside the county of their residence and schools; representatives of private schools have to May 30, 1971 to file affidavits, in COB 20, page 273-274. Notice mailed to counsel.

5-21-71 Placed Courtroom sheet in jacket file—Hearing on 5-19-71.

5-24-71 Filed Motion For Preliminary Injunction—Mailed copy to law clerk.

5-25-71 Filed Amended Notice of Depositions Upon Oral Examination. Copy to Law Clerk.

5-28-71 Filed Motion To Quash Subpoena, Hon. Andreq K. Naugle, III Atty. for Pheba Academy, West Copy to Law Clerk.

6-1-71 Placed letter in jacket file to Attys. from John Hailman, Law Clerk to Judge Keady informing them that case has been firmly set for final hearing before 3-Judge Court at 10:00 A. M., July 9, 1971 in Greenville, Miss.

5-27-71 Received in Clarksdale—letter from Brunini, Everett, Grantham & Quin stating that they represent Sister Elizabeth Jean Fracchia, Principal of St. Elizabeth School.

6-4-71 Filed Amended Notice of Depositions Upon Oral Examination. (Melvyn R. Leventhal) Copy to Law Clerk.

6-4-71 Filed Second Motion To Quash Subpoena Duces Tecum. (Gene L. Barbour, Principal of Lee Academy, Clarksdale, Miss.)
Filed Second Motion To Quash Subpoena Duces Tecum, (Rebecca H. Walton, Principal of Lula, Mississippi) Copies mailed to Francis by J. Trawick, Clarksdale, Miss.)

6-11-71 *Filed Motion To Dismiss & Response to Order filed by the Internal Revenue Service in connection with Green V. Kennedy, No. 1355-69, D.C. on Sept. 30, 1970 & Aug. 21, 1970
*(certified copy of above) Copies have been sent to all 3 three judges by Leventhal.

6-14-71 Filed Additional Deposition taken by the United States in Connection with Coffey v. State Educational Finance Commission. Civil Action No. 3906. (Loretta Turner, Theodore Prevost, Luther W. Tanner, Mrs. Robert Morton, Barbara Creekmore, Ecr.
John Andrew, Dr. Gus A. Bynum, Burnice W. Smith, Harry L. Marsalis, Harold A. Thompson, Medford Evans, William Simmons, Louis W.

Hollis, Richard Morphew, Mrs. Eloise Alderman and etc.

6-16-71 Filed Deposition of Lloyd R. Henderson, Ph.D. Placed exhibits in file 1-16.

6-17-71 Filed Depositions of Officers of the following schools in connection with Coffey V. State Educational Finance Commission, Civil Action No. 3906: North Delta School, Inc., County Day School, Jackson, Academy, South Side Academy, Vicksburg Academy (Citizens Educational Foundation), South West Academy, Lamar School Foundation, Cruger-Tchula Academy, Canton Academy, Indianola Educational Foundation, East Holmes Academy.

6-23-71 Filed depositions taken by the United States in connection with Coffey V. State Educational Finance Commission, No. 3906: Jefferson Davis Academy, Columbus Educational Foundation, Deer Creek Educa. Institute, Inc., Harrison County Private School, Sharkey-Issaquenna Lula-Rich Educational Foundation, Inc.

6-30-71 Mailed File to Greenville.

7-1-71 Filed Depositions of the following:
Janette Mayhan, Frank Alvin Weeks, Norman McKenzie, Jr., Thomas Spight, Joe Thomas, Bernard Taylor, Howard C. Bowles, Jamie W. Howell, A. R. Smithers, H. D. Graham, William C. Jaudon, Jr., Charles (Brownie Tohill, Harvey S. Jackson, A. L. Minor, Phoebe Stewart, Doug Herring. (Mailed to Greenville, Miss.)

7-7-71 Filed Deposition of M. A. Snowden. (Filed in Greenville by M. Guyton)

7-8-71 Filed Stipulation entered into between the parties. Copy to Judge's Smith's Law Clerk, original to Greenville where file is.

7-9-71 Placed letter in jacket file from Hon. William R. Lamb, Oxford, Miss. to Hon. M. Leventhal informing him that the information submitted in the letter is an alternative to the taking of the deposition of Greg Atkins, former Headmaster of College Hill Academy, Oxford, Miss.

7-12-71 Filed Deposition of Michael R. Garrett.
Filed Deposition of Anne Windham.

7-13-71 Filed Deposition of Matthew G. Turner. (mailed to Greenville)

7-19-71 Filed Motion and Notice of Motion. Copy to Law Clerk.

7-20-71 Entered Order signed by Judge Smith on 7-19-71, ordering Plaintiffs may prepare a Reply Brief, to be transmitted to each member of the Court no later than July 30, 1971, in Civil Order Book 20, page 317. Copies of Order have been sent to Counsel & Notice of Entry mailed. Mailed to Greenville to be placed in file.

7-23-71 Filed Deposition of Robert Leon Holly.; of Greenwood, Miss.
Filed Deposition of Don Johnson of Starkville, Miss.
Filed Deposition of Norman E. Harper, of Clarksdale, Miss.
Filed Deposition of Seth O. Dillion of Greenwood, Miss. Mailed to Greenville.

7-21-71 Filed Deposition of John Shearer, of the Shaw Educational Foundation and the Bayou Academy.
Filed Deposition of Lamar Leggett of Tutwiler, Miss.
Filed Deposition of Mrs. Ivy Weems, Tippo, Miss. Mailed to Greenville, Miss.

7-29-71 Filed Deposition of M. L. Branch of Winona, Miss.
Filed Deposition of LaVenna Tucker Wright of Clarksdale, Miss. Mailed above to Greenville.

8-3-71 Filed Deposition of Gene L. Barbour of Clarksdale, Miss.
Filed Deposition of Mrs. Rebecca H. Walton of Clarksdale, Miss.
Filed Deposition of Kathrine S. Wilson of Clarksdale, Miss.
Filed Deposition of Elizabeth P. Dean of Cleveland, Miss.

8-9-71 Filed Motion To Supplement The Record. Copy has been sent to Judges Concerned.

Filed Notice of Motion. Copy has been sent to the Judges concerned. Charts attached.

8-10-71 Entered Order signed by Judge Keady on 9-9-71; Ordered plaintiffs' post-trial motion to supplement the record be, and is sustained and the record accordingly supplemented, in Civil Order Book 21, page 11. Copy of Order has been sent to Judges Smith & Coleman & to Attorneys concerned. Notice of entry mailed.

8-23-71 Filed Deposition of Sam Allen, principal of French Camp Academy, with Accountants' Report attached.

9-3-71 Filed Oral Deposition of Mrs. Helen Bounds (St. George Episcopal Day School, Clarksdale, Miss.) with exhibits attached. (Mailed to Mrs. Guyton, Courtroom Deputy, Aberdeen, Miss.)

4-18-72 Filed Opinion Of The Court written by Judge Coleman.

Entered Judgment signed by Judge William C. Keady on 4-17-72 ordering: All relief sought by Plaintiffs be and the same is hereby denied and The Complaint is finally dismissed with prejudice. All costs are taxed to plaintiffs; in Civil Order Book 21, page 265. Copies of Judgment are being sent to Counsel concerned and Notice of Entry mailed. J. S. 6

5-11-72 Filed Motion For Leave To Supplement the Record. Copy to Law Clerk. Exhibits attached.

5-15-72 Entered Order signed by Judge Keady on 5-15-72 ordering that leave is hereby granted to plaintiffs to supplement and include in the record of this cause the four exhibits to which reference is made in their motion and the Clerk of this Court is directed to make such inclusion, in Civil Order Book 21, pg. 291. Copies of the order have been sent to persons concerned and Notice of Entry mailed.

5-16-72 Filed Notice of Appeal to the Fifth Circuit. Copies to all concerned.

Filed Notice of Appeal to the Supreme Court of the United States. Copies to all concerned.

5-17-72	Mailed Certified copies of Judgment and "Opinion of The Court" to the Fifth Circuit; Court of Appeals as requested and also certified copies of docket sheets and copy of letter from Hon. M. Leventhal explaining how he wants appeal handled.
5-19-72	Mailed copy of Notice of Appeal and Courtroom Deputy Sheet to Mr. Milton Cook, Court Reporter when hearings in above case were heard.
6-1-72	Filed transcript of proceedings had on 7-9-71 at 10 a.m. in Greenville before Judges Coleman, Smith & Keady. (J. Kelley)
6-23-72	Mailed original record to Supreme Court of the United States.
7-3-72	Filed Motion to Stay Proceedings on Appeal and for Retention of Record in the District Court. (copy from U.S. Court of Appeals filed 6-23-72) Filed letter from Court of Appeals that Motion had been Granted.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Northern District of Mississippi,
Filed Oct. 9, 1970, William T. Robertson, *Clerk*,
By [illegible], *Deputy*

DELORES NORWOOD, by her father CALVIN NORWOOD; VAN SIGGERS, by his mother FLOY GATES SIGGERS; AUDREY SHANDA WOODARD, by her father HENRY KING WOODARD; ANDREW GALLOWAY, by his mother GERTRUDE GALLOWAY,

PLAINTIFFS,

v.

D. L. HARRISON, SR., JIM C. BARNETT, IRENE BRELAND, GARVIN JOHNSTON, as members of the Mississippi State Textbook Purchasing Board; JOHN BELL WILLIAMS, as ex-officio chairman of the Mississippi State Textbook Purchasing Board and M. A. SNOWDEN, as Executive Secretary of the Mississippi State Textbook Purchasing Board,

DEFENDANTS.

Civil Action
No. WC7053-K

COMPLAINT

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(3) and (4). This is a suit in equity authorized by 42 U.S.C. § 1983, which seeks to redress the deprivation of rights assured and protected by the Fourteenth Amendment to the Constitution of the United States.

2. Plaintiffs seek a temporary restraining order and preliminary and permanent injunctions enjoining defendants from providing, or permitting the distribution or sale of, state purchased and owned textbooks to private racially segregated schools and academies.

3. The named plaintiffs herein, Delores Norwood, Van Siggers, Audrey Shanda Woodard and Andrew Galloway are black citizens of the United States residing in Tunica County, Mississippi. They are students in attendance at the public schools of the Tunica County School District. Their right to a racially integrated and otherwise non discriminatory public school system, vindicated by order of this Court dated January 23, 1970 [*United States and Driver v. Tunica County School District*, Civil Action Nos. DC 6718 and 7013], and their right to the elimination of state support for racially segregated schools, has been frustrated and/or abridged by the creation of the racially segregated Tunica County Institute of Learning and the policies and practices of defendants as set forth below. The named plaintiffs are represented herein by their parents.

4. The named plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. They sue in their own behalf and in behalf of students throughout the state of Mississippi who are aggrieved by the policies and practices of defendants complained of herein. The members of the class on whose behalf plaintiffs sue are so numerous so as to make it impracticable to bring them all individually before the Court, but there are common questions of law and fact involved and common grievances arising out of common wrongs. A common relief is sought for plaintiffs and all members of the class. The plaintiffs fairly and adequately represent the interests of the class. The policies and practices of defendants complained of herein are applicable to the plaintiff class generally. Moreover, the questions of law and fact common to the members of the class predominate over any question affecting only individual members and a class action is superior to other available methods for adjudication of the controversy.

5. Defendants, members of the Mississippi State Textbook Purchasing Board (hereinafter the "Purchasing Board"), and their respective addresses are: D. L. Harrison, Sr., Calhoun City, Mississippi; Jim C. Barnett, Gulfport, Mississippi; Irene Breland, Jackson, Mississippi and Garvin Johnston, Jackson, Mississippi. Defendant John Bell Williams is Governor of the State of Mississippi and ex-officio chairman of the Purchasing Board.

6. Defendant M. A. Snowden is the executive secretary of the Purchasing Board. He maintains records and otherwise administers the Purchasing Board's programs and activities on a day to day basis.

7. Under the laws of the State of Mississippi, defendants select, purchase, distribute, loan and otherwise dispose of textbooks, in behalf of the State of Mississippi, for the use of children enrolled in the elementary and secondary schools in the State of Mississippi, (Miss. Code Anno. §§ 6634, *et. seq.*). Defendants have pursued and presently pursue the unlawful policies and practices complained of herein under the color of authority vested in them by the laws of the State of Mississippi and the rules and regulations promulgated pursuant thereto.

8. Beginning with the 1964-65 school year—when the first school districts in Mississippi were required to integrate under freedom of choice—and through the present, numerous private schools and academies have been either formed or enlarged, which schools have established as their objective and/or have had the effect of affording the white children of the State of Mississippi racially segregated elementary and secondary schools as an alternative to racially integrated and otherwise non-discriminatory public schools.

9. The defendants have provided these racially segregated schools and academies and the students attending such schools, either through sale or loan, textbooks purchased and owned by the State of Mississippi and have thereby provided state aid and encouragement to racially segregated education and have thereby impeded the establishment of racially integrated public schools in violation of plaintiffs' rights assured and protected by the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, plaintiffs respectfully pray that this Court:

1. Forthwith enter an order requiring an accounting by defendants of all textbooks purchased from the State of Mississippi or on loan from the State of Mississippi by private schools and/or the students enrolled therein;

2. Forthwith enter an order preliminarily enjoining defendants to immediately recall, and otherwise assure the return to state depositories, all textbooks owned by the State of Mississippi presently being used by students in attendance at private schools which have already been

adjudged by other United States Courts both in Mississippi and the District of Columbia as racially segregated and which have been formed to provide white students with an alternative to racially integrated and non-discriminatory public schools;

3. Forthwith enter an order preliminarily enjoining defendants from any further sale or distribution of state owned textbooks to any private school and/or students enrolled therein without first notifying plaintiffs herein and obtaining the approval of this Court;

4. Thereafter permanently enjoin defendants from distributing any state owned textbooks to any private school and/or students enrolled therein without first notifying plaintiffs and obtaining approval of this Court and without first establishing that the private school is racially integrated both as to students and faculty and has not had the effect of frustrating or impeding the establishment of racially integrated public schools.

5. Grant such additional or alternative relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Melvyn R. Leventhal
Fred L. Banks
Reuben V. Anderson
John A. Nichols
538½ North Farish Street
Jackson, Mississippi 39202
Robert J. Kelly
113 Wood Street
Batesville, Mississippi 38606
Jack Greenberg
Norman Chachkin
Suite 2030
10 Columbus Circle
New York, New York 10019
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL., PLAINTIFFS
v.
D. L. HARRISON, SR., ET AL., DEFENDANTS
Civil Action No. 70-53-K

ANSWER OF DEFENDANTS—Filed November 5, 1970

The Defendants in the above styled action, by and through their attorney, file herewith their Answer to the Complaint filed against them:

First Defense

This Court has no jurisdiction of the parties nor of the subject matter of this cause.

Second Defense

The Complaint fails to state a claim against these Defendants upon which relief can be granted.

Third Defense

Defendants herein have immunity from the action filed herein against them.

Fourth Defense

Further, in answer to the allegations of the Complaint:

(1)

Defendants deny the allegations of Paragraph 1 of the Complaint.

(2)

Defendants admit the allegations of Paragraph 2 of the Complaint.

(3)

Defendants deny the allegations of Paragraph 3 of the Complaint.

(4)

Defendants deny the allegations of Paragraph 4 of the Complaint.

(5)

Defendants admit the allegations of Paragraph 5 of the Complaint.

(6)

Defendants admit the allegations of Paragraph 6 of the Complaint.

(7)

Defendants deny the allegations of Paragraph 7 of the Complaint and would state that any statutes referred to therein speak for themselves.

(8)

Defendants deny the allegations of Paragraph 8 of the Complaint.

(9)

Defendants deny the allegations of Paragraph 9 of the Complaint.

Defendants deny that Plaintiffs are entitled to any relief in this action and pray that the action be dismissed at Plaintiffs' cost.

Respectfully submitted,

A. F. SUMMER, *Attorney General of the State of Mississippi*

WILLIAM A. ALLAIN, *Assistant Attorney General of the State of Mississippi*

JESSE R. ADAMS, JR.,
Special Assistant Attorney General
of the State of Mississippi
Attorneys for Defendants
/s/ by: JESSE R. ADAMS, JR.

CERTIFICATE
(omitted in printing)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

[Northern District of Mississippi, Filed Dec. 21, 1970,
William T. Robertson, *Clerk*,
By Helen P. Burnett, Deputy]

DELORES NORWOOD, by her father CALVIN HORWOOD: VAN SIGGERS, by his mother FLOY GATES SIGGERS: AUDREY SHADA WOODARD, by her father HENRY KING WOODARD: ANDREW GALLOWAY, by his mother GERTRUDE GALLOWAY,

PLAINTIFFS

VS.

D. L. HARRISON, SR., JIM C. BARNETT, IRENE BRELAND, BARVIN JOHNSTON, as members of Mississippi State Textbook Purchasing Board; JOHN BELL WILLIAMS, as ex-officio chairman of the Miss. State Textbook Purchasing Board and M. A. SNOWDEN, as Executive Secy. of the Miss. State Textbook Purchasing Board,

DEFENDANTS.

Civil Action
No. WC 7053-K
(1) Requesting Judge: Honorable WILLIAM C. KEADY
Northern District of Mississippi
(2) District Judge: Honorable ORMA R. SMITH
Northern District of Mississippi
(3) Circuit Judge: Honorable JAMES P. COLEMAN
(4) Date of Order: December 16, 1970

The Requesting Judge (1) above named to whom an application for relief has been presented in the above cause having notified me that the action is one required by Act of Congress to be heard and determined by a District Court of three Judges, I, John R. Brown, Chief Judge of the Fifth Circuit, hereby designate the Circuit Judge (3) and District Judge (2) named above to serve with the Requesting Judge (1) as members of, and with him to constitute the said Court to hear and determine the action.

This designation and composition of the three-Judge court is not a prejudgment, express or implied, as to whether this is properly a case for a three-Judge rather than a one-Judge court. This is a matter best determined

by the three-Judge Court as this enables a simultaneous appeal to the Court of Appeals and to the Supreme Court without the delay, awkwardness, and administrative insufficiency of a proceeding by way of mandamus from either the Court of Appeals, the Supreme Court, or both, directed against the Chief Judge of the Circuit, the presiding District Judge, or both. The parties will be afforded the opportunity to brief and argue all such questions before the three-Judge panel either preliminarily or on the trial of the merits, or otherwise, as that Court thinks appropriate. See Jackson v. Choate, 5 Cir., 1968, 404 F.2d 910, Jackson v. Department of Public Welfare of the State of Florida, S.D. Fla., 1968, 296 F.Supp. 1341; City of Gainesville, Georgia v. Southern Railway Company, N.D. Ga., 1969, 296 F.Supp. 763; Smith v. Ladner, S.D. Miss., 1966, 260 F.Supp. 918; Hargrave v. McKinney, M.D. Fla., 1969, 302 F.2d 1381; Langford v. Barlow [No. 26770], 5 Cir., 1969, 417 F.2d 628, Langford v. Barlow, W.D. Tex., 1969, 304 F.Supp. 657;

/s/ JOHN R. BROWN
Chief Judge
Fifth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL., PLAINTIFFS, v. D. L. HARRISON, SR., ET AL., DEFENDANTS.	Civil Action No. WC70-53-K (Three-Judge Court)

ORDER—filed March 1, 1971

Plaintiffs having filed Motion for Accounting, Motion to Compel Defendants to Compile Data, Motion for Leave to Supplement the Record and Motion to Compel Answers to Request for Admissions or in the Alternative Motion to Supplement the Record; and the Court having read, heard and considered argument of counsel and having examined the jacket file; it is hereby ORDERED:

1. Plaintiffs' Motion for Accounting is GRANTED as follows:

A. Defendants shall forthwith post to each private school presently operating in the state of Mississippi a blank Inventory Report form. By cover letter, signed by the defendant executive secretary, each private school shall be directed to file, within fifteen days from the date of the cover letter, a completed Inventory Report which records the number of state owned textbooks presently in use or in stock at the private school.

B. Upon the return of completed Inventory Reports defendants shall prepare a compilation which reflects for each private school presently operating in Mississippi: i) the number of state owned textbooks presently in use or in stock; ii) the cost of such books to the state of Mississippi.

2. Plaintiffs' Motion to Compel Defendants to Compile Data is GRANTED as follows:

The Attorney General of the state of Mississippi is required to promptly prepare and post a letter to the headmaster or principal of each private school presently operating in the state of Mississippi. The letter shall advise each

private school that this Court requested that it report the following information to the Attorney General within fifeen (15) days:

a) The number of students by race presently enrolled in the private school;

b) The number of faculty members by race presently employed by the private school;

c) The grades served by the private school.

3. No later than ten days after the due date of reports required in paragraphs 1 and 2 above, the Attorney General, or his representative, is requested to notify the clerk of this Court of the names of all private schools which have failed or refused to file either or both reports specified in this order. A copy of the notification to the clerk of the Court shall be sent, by certified mail, to each private school listed in the notification.

4. No sooner than five days after the Attorney General files notification with the clerk of this Court, plaintiffs and/or defendants, shall seek from this Court further instructions and guidance on the methods to be employed to obtain the reports required by this order. And the Court reserves ruling on sanctions to be imposed upon private schools which fail to file the reports required by this order.

5. Plaintiffs' Motion for Leave to Supplement the Record and Motion to Compel Answers to Request for Admissions or in the Alternative Motion to Supplement the Record are GRANTED as follows:

A. The Stipulations of Fact entered by the parties in *Coffey v. State Educational Finance Commission,* Civil Action No. 3906, S.D. Miss., three-judge district court, and attached to plaintiffs' October 9, 1970 Request for Admissions shall be entered by the clerk of this Court as part of the record herein and shall be considered by the Court as admissions by the state of Mississippi binding upon the State Textbook Purchasing Board;

B. Copies of depositions taken by the United States in connection with *Coffey v. State Educational Finance Commission,* Civil Action No. 3906, S.D. Miss., three-judge district court, may be filed by plaintiffs with the clerk of this Court and entered as part of the record herein as if plaintiffs had taken such depositions in connection with this action;

C. The document referred to as Defendants' Proffer of Additional Enrollment Statistics, an attachment to the Consent Order entered on June 26, 1970 in *Green v. Kennedy*, Civil Action No. 1355-69, D.D.C., three-judge district court, which document is included in plaintiffs' October 9, 1970 Request for Admissions shall be entered as part of the record in this cause; within thirty days from the date of this order defendants may file with the clerk of this Court, a designation which specifies errors contained in the document. And in the event that defendants fail to designate errors, this Court will consider the information reflected in Defendants' Proffer of Additional Enrollment Statistics as if fully proved by plaintiffs herein.

6. All reports required by this order and received by the Attorney General or the defendant Textbook Purchasing Board shall be made available to plaintiffs' counsel for reproduction and inspection.

ORDERED this 1st day of March, 1971.

/s/ WILLIAM C. KEADY
United States District Judge

Approved As To Form:

Melvyn R. Leventhal
MELVYN R. LEVENTHAL
Counsel for Plaintiffs

Jesse R. Adams, Jr.
JESSE R. ADAMS, JR.
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, et al.,
Plaintiffs,
v.
D. L. HARRISON, SR., et al.,
Defendants.

Civil Action
No. WC70-53-K

MOTION TO SUPPLEMENT THE RECORD—
Filed August 9, 1971

Plaintiffs respectfully move this Court to enter an order supplementing the record in this cause to include the following:

1. A letter received from counsel for the College Hill Academy of Lafayette County recording information regarding that academy which was provided by agreement of the parties as an alternative to the taking of a deposition.

2. A compilation of private non-catholic schools presently receiving state owned textbooks, the number and value of textbooks at each such school, and the number of teachers and students by race at each such school during the 1970-71 school year. This chart was compiled by defendants pursuant to an order entered by Judge Keady and was transmitted to each member of the Court by counsel for defendants. But defendants failed to file a copy with the clerk of the Court.

3. A chart styled Interdependence of Public School Desegregation and the Formation and Growth of Private Academies, which has been sent to each member of the Court, but which does not as yet appear in the jacket file.

All documents referred to herein are attached to and made a part of the motion.

Respectfully submitted,
/s/ MELVYN R. LEVENTHAL
FRED L. BANKS, JR.
538½ North Farish Street
Jackson, Mississippi 39202

Sectarian

	Name of School	No. of Books	Cost to State	No. Students by Race *	No. Faculty by Race	Grades Served
1.	Presbyterian Day School	264	$ 576.45	135 W	7 W	K-5
x2.	French Camp Academy	654	2,672.58	99 W	14 W	9-12
3.	Chamberlain-Hunt Academy	829	3,398.82	360 W	26 W	7-12
4.	Clarksdale Baptist	2356	5,937.45	424 W 3 O	18 W	1-8
5.	First United Methodist	1305	3,029.25	169 W	9 W	1-6
6.	Presbyterian Day School	1247	2,323.11	141 *		
7.	St. George's Episcopal	1340	2,885.54	169 W	11 W	K-6
8.	Christ Episcopal Day School	2075	5,218.28	265 W	24 W	K-12
x9.	St. Paul's Inter-Parochial	1264	2,558.77	154 W 12 B	8 W	K-6
x10.	St. Andrew's Episcopal	2492	6,600.27	403 W 9 B	24 W 1 B	K-9
11.	Woodland Hills Baptist Academy	2279	5,598.42	428	16	1-10
x12.	Saints Academy	2148	7,259.40	273 B	17 B 1 W	1-12
13.	Heidelberg Baptist Academy	1993	5,557.50	295 W	13 W	1-12
14.	Jesus Name Faith	85	170.70	44 W	5 W	1-12
15.	St. John's Day School	1130	2,465.85	182 W 2 LA	12 W	K-6
16.	First Baptist Parochial	630	1,499.64	78 W	7 W	1-8
17.	Sylvarena Baptist Academy	1671	4,255.77	236 W	13 W	1-11
x18.	All Saints Episcopal	150	677.70	148 W 3 B	15 W	9-12
19.	Gospel Lighthouse Christian	119	472.95	22 W	3 W	1-12
	TOTALS	24,031	63,158.45	3611 White 297 Black 3 Oriental	242 White 18 Black	
20.	Adams County Private	2513	$ 8,327.34	1006	36	1-12
21.	Adams County Christian	3452	8,918.07	535 W	26 W	1-12
22.	Amite School Corporation	3950	11,875.26	581 W	25 W	1-12

23. Pine Hills Academy	1839	5,194.44	328 W	15 W	1-12
24. Gray Academy	1320	3,932.43	177 W	12 W	1-12
25. Shaw Educational Foundation	1480	4,443.00	905	47	1-12
26. Calhoun Academy	294	655.14	127 W	8 W	1-8
27. Carroll Academy	358	1,084.83	305 *		1-12
28. Chickasaw Academy	1420	3,586.17	164 *		1-12
29. Clarke Academy	387	1,478.04	340 *		1-12
30. Oak Hill Academy	2348	6,739.17	450 W	25 W	1-9
31. Pheba Academy	675	1 636.14	133 W	8 W	1-8
32. Happy Day School	652	884.73	107 W 3 C	7 W	1-3
33. Copiah Academy	2472	7,312.20	483 W	23 W	1-12
34. The Children's Academy	726	2,588.70	148	10	1-10
35. Union Private	1578	4,526.16	202	15	K-12
36. Sanford Academy	787	2,277.54	136 W	9 W	1-12
37. Covington School Foundation	512	1,494.36	75 W	6 W	1-9
38. J. A. Beeson Academy	1531	4,229.04	265 W	18 W	1-12
39. Kirk Academy	842	3,061.74	639 *		
40. Gremada Lake Academy	2523	7,119.58	381 W	13 W	1-12
41. Westminster Academy	252	773.86	132 W	15 W	1-7
42. Bearss Academy	417	1,146.18	117 W	5 W	K-8
43. Jackson Academy	3071	6,652.56	575	54	K-9
44. Southwest Academy	1167	2,649.12	131 W	9 W	1-8
45. Terry Academy	1378	3,884.61	157 W	13 W	1-11
46. Central Holmes	3861	12,787.11	501	21	1-12
47. Cruger-Tchula Academy	2299	7,712.64	438 *		
48. East Holmes Academy	2776	7,791.60	619 W	22 W	1-12
49. Four County Academy	815	1,905.90	76 W	5 W	1-8
50. Humphreys Academy	3480	10,000.71	395 W 3 C	22 W	1-12
51. Live Oak Academy	218	822.21	412 W	18 W	1-9

Name of School	No. of Books	Cost to State	No. Students by Race *	No. Faculty by Race	Grades Served
52. Claiborne Educational Foundation	2032	$ 4,792.38	252 W	13 W	1-9
53. Prentiss Christian School	779	1,975.95	180 W	10 W	1-9
54. Kemper Academy	3849	10,654.85	432 *		
55. College Hill Academy	513	1,701.51	199 *		1-12
56. Lawrence County Academy	717	2,149.32	177 W	11 W	1-12
57. Leake Academy	2369	6,809.19	500 W	20 W	1-12
58. M & L Academy	844	2,013.18	42 W	3 W	1-6
59. Greenwood Private Junior High	1160	4,288.95	227 W 1 I 1 C 1M	10 W	7-8
60. Pillow Academy	2453	7,802.87	1,189 *		1-12
61. Brookhaven Academy	2675	6,457.74	307 *		
62. Southwest Christian Academy	564	1,689.09	361 *		
63. East Lowndes Academy	1745	5,056.02	247 W	16 W	1-11
64. Heritage Academy	1593	4,029.81	350 W	17 W	1-8
65. Canton Academy	8437	25,506.60	1221 W 4 O	54 W	1-12
66. Madison-Ridgeland Academy	445	1,151.01	136 W	9 W	1-9
67. Tri-County Academy	1217	4,327.71	438 W	21 W	1-12
68. Columbia Academy	1514	4,914.35	379	23	1-12
69. West Marion Academy	2073	6,336.78	383	14	1-12
x70. C.A.D.E.T.	922	2,329.82	501 B 2W 1I	12 W 17B	K-12
71. Marshall Academy	1153	3,012.36	600 W	30 W	1-12
72. Mt. Pleasant Christian Academy	1254	3,498.30	149 W	10 W	1-9
73. North Mississippi Academy	442	1,230.96	95 *		
74. Montgomery-Carroll Academy	699	1,629.49	174 W	11 W	1-9
75. Pioneer Academy	438	922.65	45 W	4 W	1-8
76. Newton County Academy	887	2,046.92	78 W	5 W	1-8
77. Central Academy	1858	5,329.29	751 W	33 W	1-12

78. Starkville Academy	3229	9,562.77	553 W	24 W	1-12
79. North Delta Schools, Inc.	1021	3,373.19	268 *		
80. West Panola School	1143	3,134.67	203 W	15 W	1-12
81. Parklane Academy	1539	3,887.01	228 W	12 W	1-9
82. Quitman County Education Foundation	727	3,008.91	480 W	29 W	1-12
83. Brandon Academy	3912	11,447.46	589 *		
84. East Rankin Academy	1341	3,149.16	180 W	10 W	1-9
85. Flowood Academy	443	1,251.93	227 *		
*86. Piney Woods	673	2,712.27	200 *		
87. Rankin Academy	1510	5,302.47	284 W	11 W	1-12
88. Scott County Christian	2235	6,325.58	320 W	13 W	1-12
89. Sharkey-Issaquena Academy	1051	3,815.35	664 W	33 W	K-12
90. Simpson Academy	1266	3,427.89	270 W	14 W	1-12
91. Pines Academy	156	404.82	44 W	4 W	1-8
92. Central Delta Academy	1933	4,878.66	208 W 8 C	10 W	1-8
93. Indianola Academy	7985	24,029.01	1209	56	1-12
94. North Sunflower Academy	2243	7,841.28	626 W	27 W	1-12
95. Paynes Academy	1288	3,635.73	96 W	9 W	1-12
96. West Tallahatchie Academy	666	1,856.85	178 W	9 W	1-8
97. Hillcrest Academy	547	1,495.26	165 W	13 W	1-12
98. Magnolia Heights	1930	5,674.80	228 W	15 W	1-12
99. Northwest Academy	1613	4,347.15	239 W	13 W	1-12
100. Tunica Institute	2189	6,851.52	495 W	27 W	1-12
101. Citizen's School	1776	4,589.91	255 *		
102. Walnut Hills School	317	816.42	114 W	6 W	1-8
103. Deer Creek School	1821	5,126.76	387 W 9 O	24 W	1-12
104. Wayne County School Foundation	814	2,064.21	103 W	6 W	1-9
105. Centreville Academy	3750	10,295.55	407 W	18 W	1-12

Name of School	No. of Books	Cost to State	No. Students by Race *	No. Faculty by Race	Served Grades
106. Winston Academy	1781	$5,036.76	288 W	14 W	1-10
107. Benton Academy	3148	8,432.85	421 W	18 W	1-12
108. Bentonia Academy	874	1,951.35	82 W	6 W	1-8
109. Manchester Academy	1004	2,356.92	550 *		
TOTALS	149,953	431,232.15	23,858 White 501 Black 15 Chinese 13 Oriental 2 Indians	1249 White 17 Black	

x No Relief sought by plaintiffs against these Schools.
* School failed or refuses to provide enrollment; entry derives from Depositions or State Dept. of Education.

NOTE: The life of a textbook is 4 years with 25% depreciation each year.
Note appended by plaintiffs: The deposition of private school personnel or the deposition of Mr. Snowden reveal that the following additional private academies have in their possession state owned textbooks.

110. Highway Baptist School	1,304	$ 2,839.83	104	1-8
111. Jefferson Davis Academy	1,054	3,701.10	356	1-12
112. North Central Miss. Schools	723	1,602.87	67	1-9
113. Wilkinson County Christian	4,002	11,359.74	404	1-12
114. Pearl River Academy	660	1,209.06	104	1-8
	7,743	$20,712.60	1,035	

It is therefore necessary to revise the figures appearing in Plaintiffs' Brief, p. 4, as follows:

1. There are approximately 155 private non-catholic academies operating in the state enrolling approximately 42,000 students. (1970-71)
2. There are 114 private non-catholic academies, enrolling 35,800 students, presently receiving state owned textbooks. Seven of these 114 schools, enrolling 1,800 students, *are not* challenged by plaintiffs herein.
3. Plaintiffs seek relief against 107 academies, enrolling 34,000 students, which have in use or in stock 173,400 volumes of state owned textbooks, which have cost the state of Mississippi $491,000.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL.,
PLAINTIFFS

v.

D. L. HARRISON, SR., ET AL.,
DEFENDANTS

No. WC 7053-K

ORDER

Plaintiffs having filed their post-trial motion to supplement the record, and it appearing to the managing judge that it is proper for the record to be so supplemented; it is

ORDERED

That plaintiffs' post-trial motion to supplement the record be, and the same is hereby sustained and the record accordingly supplemented.

This, 9th day of August, 1971.

/s/ WILLIAM C. KEADY
United States District Judge
For the Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL.,
PLAINTIFFS,
v.
D. L. HARRISON, SR., ET AL.,
DEFENDANTS.

Civil Action
No. WC70-53-K

MOTION FOR LEAVE
to Supplement the Record—filed May 15, 1972

Plaintiffs respectfully move the Court for leave to supplement and include in the record of this action the following documents attached hereto:

1. Oral Argument—Exhibit One, Statewide Private Non-Catholic Schools 1963-64;
2. Oral Argument—Exhibit Two, Statewide Enrollments;
3. Oral Argument—Exhibit Three, Schools Receiving Textbooks And Under Challenge In This Lawsuit;
4. Oral Argument—Exhibit Four, A Chart Recording Characteristics Of Private Schools Evidencing Coincidence Of Private School Formation And Growth And Public School Desegregation.

All four of these exhibits were before this Court prior to the entry of a Decision and Judgment. All were compiled from data in evidence through Stipulations.

May 9, 1972

Respectfully submitted,
/s/ FRED L. BANKS, JR.
MELVYN R. LEVENTHAL
538½ North Farish Street
Jackson, Mississippi 39202

JACK GREENBERG
Suit 2030
10 Columbus Circle
New York, New York 10019

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL., PLAINTIFFS,
v.
D. L. HARRISON, SR., ET AL., DEFENDANTS.

Civil Action
No. WC70-53-K

ORAL ARGUMENT—EXHIBIT ONE

Statewide
Private Non-Catholic Schools
1963-64

I. Black Schools			
1. Central Miss. College (Baptist; closed at end of 1965-66 school year)	K-12		122
2. CMI College High (Church of Christ)	K-12		178
3. St. Marks School of Jackson, Miss. (Episcopal; closed at end of 1965-66 school year)	1-8		97
4. Saints Academy (Church of Christ; Est. 1954)	K-12		305
5. Piney Woods (Est. Ca. 1910)	K-12		214
		TOTAL BLACK	916
II. White Schools			
6. French Camp Academy (Presbyterian; for children from broken or disrupted homes) (Est. Ca. 1860)	9-12		134
7. Chamberlain Hunt Academy (Presbyterian)	8-12		202
8. St. George Day School (Episcopal) (Est. 1959)	K-3		72

9.	Gulf Coast Military Academy (Serving primarily students residing outside of state) (Est. 1912)	2-8	156
10.	Jackson Academy (Est. 1959)	K-7	235
11.	St. Andrew's Episcopal Day School (Presently integrated)	K-6	151
12.	Little Red School House of Jackson, Miss. (for mentally retarded)	(ungraded)	58
13.	YMCA—Part Time (Closed at end of 1965-66 school year)	8-12	32
14.	Jackson Christian (Closed at end of 1964-65 school year)	K-6	25
15.	St. John's Day School	1-6	89
16.	Bass Memorial	9-12	146
17.	All Saints Episcopal (Now integrated)	9-12	146
		TOTAL WHITE:	1,446
		GRAND TOTAL (white & black):	2,362

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL.,
PLAINTIFFS,

v.

D. L. HARRISON, SR., ET AL.,
DEFENDANTS.

Civil Action
No. WC70-53-K

ORAL ARGUMENT—EXHIBIT TWO

Statewide Enrollments

	Private Non-Catholic			Public		
		Change	# of Schools		Change	
1963-64	2,362		17	570,000		
1964-65	2,408	+ 46	21	576,000	+ 6,000	
1965-66	3,841	+ 1,433	41	583,000	+ 7,000	
1966-67	5,452	+ 1,611	49	582,500	— 500	
1967-68	6,546	+ 1,094	58	582,500	—	
1968-69	9,064	+ 2,518	69	581,500	— 1,000	
Sept. 1969	—		—[1]	575,500	— 6,000	—31,000
Feb. 1970	30,939	+21,875	124	550,500	—25,000	
Sept. 1970	42,000[2]	+11,061	155	534,500	—16,000	

[1] Statewide statistics not available; stipulations show only that by the end of the 1969-70 school year there were 30,939 students in 124 private academies.

[2] Estimate based on stipulations; the exact figure lies somewhere between 41,000 and 43,000.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL.,
PLAINTIFFS,
v.
D. L. HARRISON, SR., ET AL.,
DEFENDANTS.

Civil Action
No. WC70-53-K

ORAL ARGUMENT—EXHIBIT THREE

Schools Receiving Textbooks And Under Challenge In This Lawsuit

	Number of Schools Opening for First Time	Total Enrollment Upon Opening	Average Number of Students Upon Opening
Prior to 1963-64	3[a]	—	—
1963-64	1[b]	89	89
1964-65	2[c]	44	22
1965-66	16	1,308	82
1966-67	11	957	87
1967-68	4	212	53
1968-69	8	722	90
Sept. 1969	19	2,872	151
Feb. 1970	16[d]	4,444	277
Sept. 1970	28	5,816	207
TOTAL:	108		

[a] Chamberlain Hunt, St. George's, Jackson Academy.
[b] St. John's Day School.
[c] Clarksdale Baptist Church and Gospel Lighthouse Christian.
[d] Includes Tunica Church School now defunct.

DELORES NORWOOD, ET. AL. VS. D. L. HARRISON

Civil Action No. WC 70-53 K

ORAL ARGUMENT—EXHIBIT FOUR

KEY TO CHART

1—Academy began in or used at some time abandoned or former public school building.
2—School began in or used at some time church facilities not originally designed for full-time school.
3—Academy began in or used at some time private residence or other formerly non-school facility.
4—Academy began in new facilities constructed and designed for full-time school.
5—Academy opened for first time, added grades and/or had a significant increase in enrollment on date corresponding to a key public school integration date.
6—Academy's beginning grades and/or grades added correspond in whole or part to grades being desegregated in the public schools at the same time.
7—Academy is in county which had two or more academies begin at same time.
8—Academy began September, 1969 in public school district with 1969-70 final integration plan.
9—Academy began January or February, 1970 in public school district with 1969-70 final integration plan.
10—Academy began September, 1970 in public school district with 1970-71 final integration plan.
11—Academy was not accredited by State when it received textbooks.
12—Students brought some or all books with them when transferring from public school.
13—Academy covered by *Coffey* Appendix A or Appendix B or by both Appendix A and Appendix B.
14—Academy refused to give IRS assurance of its adoption of a racially non-discriminatory admissions policy and as a result had its tax exempt status revoked or its application for such status denied.
15—Academy in public school district of *Alexander v. Holmes.*

NAME OF ACADEMY	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
1. Adams County Christian	†	†	†	†	X	X*			X		†	†			X
2. Adams County Private	†	†	†	†	X	X					†	†	X	X	X
3. Amite School Corporation		X			X	X*	X		X						

4. Bearss Academy	†	†	†	†	X	X						†	†	X		X	
5. Benton Academy		X			X	X•	X		X							X	
6. Bentonia Academy		X			X	X•	X		X							X	
7. Brandon Academy		X			X	X•								X	X		
8. Brookhaven Academy	†	†	†	†	X	X•			†	(X)	†	†	†			X	
9. Calhoun Academy			X		X	X						X			X		
10. Canton Academy		X			X	X•								X	X	X	
11. Carroll Academy	X				X	X											
12. Central Academy	†	†	†	†	X	X						†	†			X	
13. Central Delta Academy	†	†	†	†	X	X•	X	X				†	†				
14. Central Holmes		X			X	X•	X							X		X	
15. Centreville Academy	†	†	†	†	X	X•	X		X				X			X	
16. Chamberlain-Hunt	†	†	†	†	†							†	†				
17. Chickasaw Academy		X			X	X											
18. Children Academy (The)	†	†	†	†	X	X•	X			X		†	†				
19. Christ Episcopal Day School	†	†	†	†	X	X						†	†				
20. Citizen's School		X			X	X						X		X	X		
21. Claiborne Educational Foundation	†	†	†	†	X	X						†	†	X	X		
22. Clarke Academy	†	†	†	†	X	X		X				†	†			X	
23. Clarksdale Baptist		X			X	X	X		X			†	†				
24. College Hill Academy	X				X	X										X	
25. Columbia Academy	X		X		X	X•	X		X					X			
26. Copiah Academy	†	†	†	†	X	X	X					†	†	X		X	
27. Covington School Foundation, Inc.	†	†	†	†	X	X						†	†	X	X	X	
28. Cruger-Tchula Academy	†	†	†	†	X	X	X					†		X	X	X	
29. Deer Creek Academy	X				X	X•						X[1]		X			

Name of Academy	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
30. East Holmes Academy		X			X	X*	X						X	X	X
31. East Lowndes Academy	↑	↑	↑	↑	X	X*				X	↑	↑			
32. East Rankin Academy	↑	↑	↑	↑	X	X		↑ (X)	↑		↑	↑			
33. Enid Academy	↑	↑	↑	↑	X	X*	X			X	↑	↑			
34. First Baptist Parochial		X			X	X*	X			X	X	X			
35. First United Methodist		X			X	↑					X				
36. Flowood Academy	↑	↑	↑	↑	X	X		↑ (X)	↑		↑	↑			
37. Four County Academy	↑	↑	↑	↑	X	↑	X	↑ (X)	↑		↑	↑			X
38. Gospel Lighthouse Christian School	↑	↑	↑	↑	X	X					↑	↑			
39. Gray Academy	↑	↑	↑	↑	X	X*					↑	↑	X	X	
40. Greenwood Private School		X			X	X*				X	↑				
41. Grenada Lake Academy	X				X	X*			X		X			X	
42. Happy Day School		X			X	X*				X					
43. Heidelberg Baptist	↑	↑	↑	↑	X	X*				X	↑	↑			
44. Heritage Academy	↑	↑	↑	↑	X	X*					↑	↑	X	X	
45. Highway Baptist		X			X	X*				X	X				
46. Hillcrest Academy	X				X	X*	X			X					
47. Humphreys Academy	↑	↑	↑	↑	X	↑					↑	↑		X	
48. Indianola Academy		X			X	X*	X				X	X	X		
49. J. A. Beeson Academy			X		X	X							X	X	X
50. Jackson Academy	↑	↑	↑	↑	X	X*	↑				↑	↑	X	X	X
51. Jefferson Davis Academy	X				X	X					↑		X	X	
52. Jesus Name Faith	↑	↑	↑	↑	↑	↑		↑ (X)	↑		↑	↑			
53. Kemper Academy	↑	↑	↑	↑	X	X*			X		↑	↑			X
54. Kirk Academy				X	X	X					X		X	X	
55. Lawrence County Academy	↑	↑	↑	↑	X	X		↑ (X)	↑		↑	↑			X

| | | |

	Name of Academy	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
81.	Presbyterian Day School (Coahoma County)		X			X	X*				X	†				
82.	Quitman County Educational Foundation		X	X		X	X*					†				X
83.	Rankin Academy	†	†	†	†	X	X		†	(X) †		†	†			
84.	St. George's Episcopal		X			X	†					†	†			
85.	St. John's Day School	†	†	†	†											
86.	Sanford Academy	†	†	†	†	†	X				X					
87.	Scott County Christian Academy	†	†	†	†	X	X*				X	†	†			
88.	Sharkey-Issaquena Academy		X			X	X							X	X	X
89.	Shaw Educational Foundation (Bayou Academy; Duncan Academy)	X				X	X					†	†	X		
90.	Simpson Academy	†	†	†	†	X	X*				X					
91.	Southwest Academy	†	†	†	†	X	X	†				†	†	X	X	X
92.	Southwest Christian Academy		X			X	X					X		X	X	X
93.	Starkville Academy				X	X	X*				X				X	
94.	Sylvarena Baptist Academy	†	†	†	†	X	X*				X	†	†			
95.	Terry Academy	†	†	†	†	X	X	†				†	†			X
96.	Tri-County Academy	†	†	†	†	†	†				X	†	†			X
97.	Tunica Institute of Learning		X			X	X							X	X	
98.	Union Private School	†	†	†	†	X	X*	X			X	†	†			
99.	Walnut Hills School	†	†	†	†	X						†	†	X		
100.	Wayne County Educational Foundation	†	†	†	†	X	X*				X	†	†			

101. West Marion Academy	?	?	?	?	X	X*			? (X) ?			?	?				X
102. Westminister Academy	?	?	?	?	X							?	?				
103. West Panola School, Inc.	X				X	X*	X				X	X					
104. West Tallahatchie Academy	X				X	X*	X				X	X					
105. Wilkinson County Christian Academy	?	?	?	?	X	X	X		X			X					
106. Winston Academy			X		X	X	X										
107. Woodland Hills Baptist Academy	?	?	?	?	X	X*	?					?	?				X
Unnamed Tunica Church Schools		X			X	X*			X			X	X				
TOTALS:	19	26	7	4	102	97X (62X*)	33	13	17	28	18	5	29	28	32		

[1] Whenever a question mark appears on this chart it indicates that information was unavailable usually because no deposition was taken of the school involved.

[1] X* indicates that the school opened at a time when *all* of its grades, upon opening, were being desegregated in the public schools.

[3] X[1] indicates that the school offers grades 1-12 but is only accredited for grades 1-8.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

DELORES NORWOOD, ET AL.,
PLAINTIFFS,

V.

D. L. HARRISON, SR., ET AL.,
DEFENDANTS.

No. WC70-53-K

ORDER

Plaintiffs having moved for leave to supplement the record by the incorporation of four exhibits used in oral agrument, and it appearing that such exhibits were compiled on the basis of data already in evidence through stipulation of counsel and that the exhibits would expedite the consideration of the entire record; it is

ORDERED

That leave is hereby granted to plaintiffs to supplement and include in the record of this cause the four exhibits to which reference is made in their motion, and the Clerk of this court is hereby directed to make such inclusion.

This, 15th day of May, 1972.

WILLIAM C. KEADY
United States District Judge
For the Court

Notation re Opinion and Judgment of the District Court

The District Court opinion and judgment, entered April 18, 1972, are printed in the Jurisdictional Statement, and may be found therein at pages 1a-23a. They are therefore not printed in this Appendix.

☆ U.S. Government Printing Office: 1973—492-990/457

JURISDICTIONAL STATEMENT

JUL 14 1972

MICHAEL RODAK, JR., C

IN THE

Supreme Court of the United States

October Term, 1972

No. .....

DELORES NORWOOD, *et al.*,

Appellants,

—v.—

D. L. HARRISON, SR., *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

MELVYN R. LEVENTHAL
FRED L. BANKS, JR.
REUBEN V. ANDERSON
538½ North Farish Street
Jackson, Miss. 39202

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

Attorneys for Appellants

INDEX

PAGE

Opinion Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 2

Question Presented 3

Statement 3

I. Proceedings Below 3

II. The Growth of Private Academies and Their Impact on Public Education 7

A. State-Wide Perspective 7

B. Impact of Private Academies on Public School Desegregation in Specific School Districts 10

(1) Holmes County School District 11

(2) Canton Municipal Separate School District 11

(3) Jackson Municipal Separate School District 12

III. The State's Textbook Program 14

A. The Program Generally 14

B. The Extent of Textbook Aid to Private Racially Segregated Academies 16

The Questions Presented Are Substantial 17

Conclusion 26

PAGE

APPENDIX A—

District Court Opinion 1a

District Court Judgment 23a

Notice of Appeal 24a

APPENDIX B—

Mississippi Textbook Statutes 27a

APPENDIX C—

Statewide School Enrollments, 1963-64—1970-71 ..44a

APPENDIX D—

Private Non-Sectarian Academies Participating in State's Textbook Program 46a

Table of Authorities

Cases: PAGE

Aaron v. Cooper, 261 F.2d 97 (8th Cir. 1958) 21
Alexander v. Holmes County Board of Education, 396 U.S. 19 (1969) 3, 4, 7, 8, 11, 12
Anderson v. Canton Municipal Separate School Dist. & Madison County School Dist., No. 28030 (5th Cir., Dec. 22, 1969) 21

Blackwell v. Anguilla Line Consolidated School Dist., No. 28030 (5th Cir., No. 24, 1969) 21
Board of Education v. Allen, 392 U.S. 236 (1968) 6, 23
Brown v. South Carolina Board of Education, 296 F. Supp. 199 (D. S.C. 1968), affirmed per curiam, 393 U.S. 222 (1968) 19, 20

Coffey v. State Educational Finance Commission, 296 F. Supp. 1389 (S.D. Miss. 1969) 8, 9, 11, 21
Coit v. Green, 404 U.S. 997 (1971) 19
Cooper v. Aaron, 358 U.S. 1 (1958) 17, 22, 24, 25

Evers v. Jackson Municipal Separate School District, 328 F.2d 408 (5th Cir. 1964) 7

Green v. Connally, 330 F. Supp. 1150 (D. D.C. 1971 affirmed sub nom. Coit v. Green, 404 U.S. 997 (1971) County School Board of New Kent County 18, 23
Green v. ~~Connally~~, 330 F. Supp. 1150 (D. D.C. 1971), 391 U.S. 430 (1968) 3, 4, 7, 8, 17, 19
Green v. Kennedy, 309 F. Supp. 1127 (D. D.C. 1970), appeal dismissed for want of jurisdiction sub nom. Cannon v. Green, 398 U.S. 956 (1970) 11, 18, 19
Griffin v. State Board of Education, 296 F. Supp. 1178 (E.D. Va. 1969) 20

PAGE

Jackson Municipal Separate School District v. Derek Jerome Singleton, 402 U.S. 944 (1971) 13

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963) 2

Lee v. Macon County Board of Education, 267 F. Supp. 458 (M.D. Ala. 1967), affirmed sub nom. Wallace v. United States, 389 U.S. 215 (1967) 25
Lemon v. Bossier Parish School Board, Civ. No. 10,687 (W.D. La., Sept. 25, 1970) 21
Lemon v. Kurtzman, 403 U.S. 602 (1971) 24

North Carolina Board of Education v. Swann, 402 U.S. 43 (1971) 18

Poindexter v. Louisiana Finance Commission, 274 F. Supp. 833 (E.D. La. 1967), affirmed per curiam, 389 U.S. 571 (1968) 19, 20

Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971) 18

United States v. Covington County School Dist., No. 28030 (5th Cir., Dec. 17, 1969) 21
United States v. Hinds County School Board, 433 F.2d 598 (5th Cir. 1969) 21
United States v. Jefferson County Board of Education, 372 F.2d 836, *affirmed* en banc, 380 F.2d 385 (5th Cir. 1967) 18
U. S. v. Tunica County School District, 323 F. Supp. 1019 (N.D. Miss. 1970), *affirmed*, 440 F.2d 377 (5th Cir. 1971) 4

PAGE

Wallace v. U. S., 389 U.S. 215 (1967), affirming Lee v. Macon County Bd. of Ed., 267 F. Supp. 458 (M.D. Ala. 1967) 19

Wright v. City of Brighton, 441 F.2d 447 (5th Cir.), cert. denied sub nom. Hoover Academy, Inc. v. Wright, 404 U.S. 915 (1971) 20

Wright v. Council of the City of Emporia, 40 U.S.L. Week 4806 ..... 18, 21, 23

Statutes:

28 U.S.C. § 1253 2

28 U.S.C. §§ 2281, 2284 1

Miss. Code, 1942, § 6511 14

Miss. Code, 1942, § 6634 14

Miss. Code, 1942, Sections 6634-6659.5 14

Miss. Code, 1942, § 6641 ..... 14, 15

Miss. Code, 1942, § 6646 ..... 14, 15, 16

Miss. Code, 1942, § 6656 ..... 2, 3

Miss. Code, 1942, § 6658 14

Other Authority:

U.S. Code Congressional and Admin. News, Sept. 5, 1970, P.L. 91-381, 84 Stat. 806 15

IN THE

Supreme Court of the United States

October Term, 1972

No. .....

DELORES NORWOOD, *et al.*,

Appellants,

—v.—

D. L. HARRISON, SR., *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

JURISDICTIONAL STATEMENT

Opinion Below

The opinion of the United States District Court for the Northern District of Mississippi, reported at 340 F. Supp. 1003 (N.D. Miss. 1972), is appended hereto, Appendix A, pp. 1a-22a.

Jurisdiction

This is an appeal from a final judgment entered by a three-judge district court, convened pursuant to 28 U.S.C. §§2281 and 2284, denying a permanent injunction enjoining state officers from enforcing a state statute having state-wide application. Jurisdiction of this Court is ac-

cordingly invoked pursuant to 28 U.S.C. §1253. *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144 (1963).

Complaint was filed on October 8, 1970. The case was submitted to the district court on the basis of stipulations, depositions, briefs and oral argument on July 9, 1971. The district court's judgment, denying all relief and dismissing the complaint, was rendered on April 17, 1972, and entered on April 18, 1972 (Appendix A, p. 23). Notice of appeal was filed in the United States District Court for the Northern District of Mississippi on May 16, 1972 (Appendix A, p. 24a).

Constitutional and Statutory Provisions Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

This case also involves §6656 of the Mississippi Code, 1942 (volume 5, pp. 495-96 of the Mississippi Code, 1942, Chap. 152, Laws of 1940), which states:

> *Plan.*—This act is intended to furnish a plan for the adoption, purchase, distribution, care and use of free textbooks to be loaned to the pupils in all elementary and high schools of Mississippi.
>
> The books herein provided by the board shall be distributed and loaned free of cost to the children of the free public schools of the state, *and all other schools located in the state,* which maintain educational standards equivalent to the standards established by the state department of education for the state schools.
>
> Teachers shall permit all pupils in all grades of any public school to carry to their homes, for home

study, the free text books loaned to them, and to carry to their homes, for home study, all other regular text books used in the public schools of the state whether they be free text books or not.[1] (Emphasis added.)

Question Presented

Whether Miss. Code, 1942, §6656, to the extent that it provides for the distribution and use of state owned textbooks to private racially segregated academies formed for the purpose and/or having the effect of providing white students with an alternative to public integrated schools, violates the Equal Protection Clause of the Fourteenth Amendment.

Statement

I. *Proceedings Below.*

January 23, 1970, the United States District Court for the Northern District of Mississippi entered an order requiring the integration of all public schools of Tunica County, Mississippi, no later than February 2, 1970, in accordance with standards established by this Court in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969). Upon the entry of this order *all* white students of Tunica County withdrew from public schools and formed a private academy housed in church facilities. The principal and 17 of 21 high school teachers of the Tunica County system resigned in mid-year to assume positions with the new private school.

---

[1] The statutes defining Mississippi's textbook program are appended hereto, Appendix B, pp. 27a-43a.

December 4, 1969, the Executive Secretary of the Mississippi Textbook Purchasing Board, appellee herein, circulated a memorandum to "County and Separate District Superintendents" which stated:

> Subject: Textbooks for Private Schools.
>
> We have many disturbed parents since the Court decisions. Many of them are going to organize private schools, and they are going to need books.
>
> Since all the money has been allotted for this year, it will be necessary for the superintendents to transfer books with the student as he transfers to the private school. . . .
>
> We appreciate your cooperation in this difficult situation.

As a result of this memorandum the textbooks used by white students fleeing integrated education in Tunica County and throughout the state were transferred from public schools to private segregationist academies in January, 1970.[1]

October 8, 1970, four black students of Tunica County filed this class action to enjoin the Mississippi Textbook Purchasing Board and its Executive Secretary from distributing state-owned textbooks to the private academies of Tunica County and all other academies of Mississippi formed in response to the implementation of this Court's *Brown*,[*] *Alexander* and *Green* decisions. Plaintiffs alleged, *inter alia*, that:

---

[1] Tunica County public school officials continued to pay the salaries of the white teachers and the principal who abandoned the public schools in favor of the newly formed private academy. This practice was enjoined and restitution ordered. *U.S.* v. *Tunica County School District*, 323 F. Supp. 1019 (N.D. Miss. 1970), affirmed, 440 F.2d 377 (5th Cir. 1971).

[*] *Brown* v. *Board of Education*, 347 U.S. 483 (1954); 349 U.S. 294 (1955).

[T]heir right to a racially integrated and otherwise non-discriminatory public school system, vindicated by order of . . . [the district court] dated January 23, 1970 [*United States and Driver* v. *Tunica County School District*, . . .] and their right to the elimination of state support for racially segregated schools, have been frustrated and/or abridged by the creation of the racially segregated Tunica County Institute of Learning and the policies and practices of defendants as set forth below . . .

Beginning with the 1964-65 school year—when the first school districts in Mississippi were required to integrate under freedom of choice—and through the present, numerous private schools and academies have been either formed or enlarged, which schools have established as their objective and/or have had the effect of affording the white children of the State of Mississippi racially segregated elementary and secondary schools as an alternative to racially integrated and otherwise non-discriminatory public schools.

The defendants have provided these racially segregated schools and academies and the students attending such schools, . . . textbooks purchased and owned by the State of Mississippi and have thereby provided state aid and encouragement to racially segregated education and have thereby impeded the establishment of racially integrated public schools in violation of plaintiffs' rights assured and protected by the Fourteenth Amendment to the Constitution of the United States.

Appellants prayed for an order enjoining the Mississippi Textbook Purchasing Board from any further distribution of state owned textbooks to segregationist academies and for an order recalling state textbooks which had al-

ready been distributed to such institutions. After stipulations were filed and depositions taken, appellants refined their prayer for relief: we sought an order withdrawing state textbook aid from 148 specifically named private academies formed or enlarged for the purpose or with the effect of providing white students with an alternative to public integrated education.[3]

April 17, 1972, the district court rendered its opinion holding that: (a) plaintiffs had failed to demonstrate that textbook aid was vital to the private schools, i.e., that whites would return to public schools if textbook aid was withdrawn; moreover, public integrated education was secure since 90% of the student population of the state continued to enroll in public schools; (b) the statute under challenge was enacted in 1940 and was hence free of any specific intent to aid private racially segregated academies; (c) the state's statute contemplated textbook aid to students and not to schools and was therefore valid under the distinction approved by this Court in the context of the First Amendment and aid to parochial education. *Board of Education* v. *Allen*, 392 U.S. 236 (1968).

---

[3] Appellants did not challenge textbook aid to the Catholic School System of the state which contains 47 schools and enrolls 12,100 students because that system has generally not been made available to white students fleeing integrated public schools. In addition, we excluded 7 academies which were either all-black, integrated or serving the needs of abandoned, orphaned or retarded children.

Of the 148 specifically named academies against which plaintiffs sought relief, 107 were receiving textbooks and another 41 were eligible but not participating in the state's program.

II. *The Growth of Private Academies and Their Impact on Public Education.*

A. State-Wide Perspective.

The district court found that by the commencement of the 1970-71 school year a network of 148 private segregated academies enrolling approximately 42,000 students had been formed in the state to provide white students with an alternative to integrated public schools. As we demonstrate below the creation and enlargement of these academies occurred simultaneously with major events in the desegregation of public schools and frustrated the attainment of fully integrated public schools and the promise of *Brown, Green* and *Alexander*.

The decade immediately following *Brown*—1954-1964—was marked by "Massive Resistance" and public schools were operated on an absolutely segregated basis. Accordingly, as late as the 1963-64 school year there was virtually no private segregationist school system in the state.[4]

In 1963, black students in Jackson, Leake County, Biloxi and Clarksdale filed the state's first school desegregation suits.[5] In 1964, these four districts were required to admit black first graders into white schools and the private segregationist academy appeared for the first time. White Citizens' Council School #1 and Southside Academy

---

[4] During the 1963-64 school year there were 17 private non-catholic academies enrolling 2,362 students operating in the state. Five enrolled black students only; two were schools for retarded, orphaned or abandoned children; one was a Military Academy; two were parochial schools now operated on an integrated basis; two operated part time programs enrolling only 25 students. The five remaining schools enrolled only 722 students.

[5] The late Medgar Evers filed the state's first school desegregation suit in April, 1963. *Evers* v. *Jackson Municipal Separate School District*, 328 F.2d 408 (5th Cir. 1964).

opened their doors in Jackson; Clarksdale Baptist School began an elementary program for the first time; and St. George Day School, also of Clarksdale, doubled its enrollment and added three grades to its curriculum. The ~~Lake~~ Leake County Academy opened with a curriculum limited to first graders. These five schools were the only new or enlarged private academies operating in the state during the 1964-65 school year.

1965-66 witnessed the implementation of the Civil Rights Act of 1964 and the beginning of a concert of effort involving the Department of Justice, Department of Health, Education and Welfare and private litigants to promote integrated public schools. Prodded by *Singleton* v. *Jackson Municipal Separate School District*, 348 F.2d 729 (5th Cir. 1965), most public school districts in the state integrated at least four grades under freedom of choice during the 1965-66 school year. And by 1965-66 Mississippi counted 41 private segregationist academies enrolling 3,841 white students.

> [D]uring the 1965-66 school year twenty new private schools . . . were added [to the twenty-one] that had been in operation in 1964-65. In each instance the new schools opened in public school districts which either were under court order to desegregate or had submitted voluntary desegregation plans to the United States Department of Health, Education and Welfare. *Coffey* v. *State Educational Finance Commission*, 296 F. Supp. 1389, 1391 (S.D. Miss. 1969).

Green and *Alexander* implemented in Mississippi during the 1969-70 or 1970-71 school year signalled the end of freedom of choice and token desegregation; all students in Mississippi public schools were then assigned under "terminal" plans for desegregation. 1969-70 also witnessed

the opening of 55 new private academies and the withdrawal of 21,875 white students from public schools. During the 1970-71 school year an additional 11,061 white students withdrew from public schools to enroll in 31 new academies. (Public and private school enrollments for each year, 1963-64 through 1970-71, are contained in Appendix C hereto.)[6]

In almost all cases the private segregationist academies were opened without any meaningful planning and on the "thinnest financial basis." *Coffey* v. *State Educational Finance Commission*, 296 F. Supp. 1389, 1392 (S.D. Miss. 1969). No less than 19 were opened in obsolete and abandoned public school buildings; an additional 26 were opened in church facilities intended for Sunday School purposes only; seven academies were opened in private homes or in buildings that were not constructed to house educational facilities. Of the approximately 100 academies for which information is available through deposition,[7] only four opened in newly constructed facilities designed to house an educational program. Many of the schools operate without any formal budget and a few depended upon contributions rather than tuition.

Virtually all of the academies obtained the majority of their teachers and administrators from the public school systems. Virtually all rely upon the desegregation of public schools and "white flight" for their survival.

---

[6] The record in this case was closed before exact 1970-71 enrollment figures were available and all references to such enrollments are estimates accepted by the district court.

[7] There are 104 depositions contained in this record.

B. Impact of Private Academies on Public School Desegregation in Specific School Districts.

Although the district court found that 90% of the state's school population continues to attend public schools it carefully refrained from any specific finding that private academies have not undermined public integrated education. In fact, the state-wide retention statistic of 90% depends upon the inclusion of many schools districts which have only a token number of black students. In the entire "gulf coast" of Mississippi and several of the northernmost school districts of the state, for example, there has been less resistance to public school desegregation.[8] But in districts where public officials have provided no leadership for desegregation and blacks constitute a larger percentage of the student population, the implementation of freedom of choice or terminal plans of pupil assignment triggered the decimation of the white public school enrollment and the resegregation of public schools.

The following desegregation histories of specific school districts illustrate the pattern which emerged upon desegregation in *all* school districts wherein blacks constitute a substantial segment of the student enrollment.

---

[8] Indeed, the record shows that such districts were generally desegregated without litigation and at least one year in advance of compliance in other parts of the state. Biloxi Municipal Separate, one of the defendant districts in the original school desegregation cases in 1963-64, is 85% white and without any private academy. It desegregated all twelve grades under freedom of choice by the 1966-67 school year although it could have easily obtained a stay until the 1967-68 school year.

(1) *Holmes County School District*[9]

In September, 1965, the United States District Court for the Southern District of Mississippi ordered Holmes County to desegregate grades 1-4 under freedom of choice. Concurrently, three private academies, limited to grades 1-4 or 1-6 and enrolling approximately 450 students, were opened. By the close of the 1967-68 school year, when the Holmes County system was desegregated under freedom of choice for all twelve grades, the private schools had expanded their program to twelve grades and their combined enrollment to 650 white students.

Holmes County desegregated its schools under a terminal plan in September, 1970.[10] At that moment one additional private school opened in the county and all but a handful of white students formerly enrolled in the county's public schools withdrew to attend private segregationist academies. Holmes County presently has two school systems: one public, staffed and attended by blacks; the other private, and staffed and attended by whites who abandoned the public schools upon this Court's mandate in *Alexander*. The appellees treat both school systems as equals under the state's textbook program.

(2) *Canton Municipal Separate School District*

The Canton Academy was opened in September, 1965 concurrently with the implementation of a freedom of choice plan for grades 1-4 in the public school system. At

---

[9] The interdependence of public school desegregation and the formation and growth of private academies in Holmes County was discussed in *Coffey* v. *State Educational Finance Commission*, 296 F. Supp. 1389, 1391, f.n. 7, (S.D. Miss. 1969) and *Green* v. *Kennedy*, 309 F. Supp. 1127 1133 (D.C. 1970).

[10] Holmes County was one of three districts consolidated under the *Alexander* caption which was given until September 1970 to implement a "terminal" plan.

the close of the freedom of choice stage of desegregation (1968-69), the Canton Academy enrolled 140 students in a curriculum limited to grades 1-8. On January 19, 1970, at the precise moment public schools opened under the terminal plan of pupil assignment mandated by this Court in *Alexander*, the Canton Academy expanded to serve grades 1-12. Its enrollment surged to 1,322, or virtually the entire white student body of the Canton Municipal Separate School District. At the same moment, the academy was moved into an abandoned tent factory with a staff of 20 white teachers who had left the public schools and with textbooks supplied by appellees herein. (The experience of the Tunica County system, wherein named plaintiffs attend school, was identical to that of Canton and Holmes County, *supra*, pp. 4-5.)

(3) *Jackson Municipal Separate School District*

Prior to the 1964-65 school year Jackson and the surrounding Hinds County counted only three white private academies.[11] All were limited to the elementary grades and their combined enrollment totaled 411. The 1964-65 school year witnessed the desegregation of grade one under freedom of choice and Citizen's Council School #1 and Southside Academy opened as small elementary schools serving grades 1-4. In September, 1965, Jackson and Hinds County desegregated four grades under freedom of choice and announced that all twelve grades would be so desegregated by 1967-68. During the same month White Citizen's Council #1 expanded its program to all twelve grades and increased its enrollment from 25 to 103 students while Southwest Academy and First Presbyterian Day School opened for the first time. When all twelve grades of the public system had been desegregated in

[11] St. Andrews Episcopal (integrated), Jackson Academy (opened in 1959) and Jackson Christian.

1967-68, there were nine segregationist academies enrolling 1,250 students operating throughout Jackson and Hinds County.

Terminal plans of pupil assignment were implemented in Jackson and Hinds County in January and September, 1970. In September, 1969, the White Citizen's Council operated three schools enrolling 449 students. In January, 1970, enrollment at Council Schools rose to 2,920 and other groups opened three new academies. In September, 1970, when further changes in the plans of pupil assignment were implemented, the White Citizen's Council opened three new academies while other private groups opened two more. By the 1970-71 school year there were *at least* 18 private academies enrolling over 10,000 students operating in the Jackson-Hinds County area.[12] Jackson school officials recently explained the impact of private academies upon their system to the court:

> For this pattern is emerging: the Courts will attempt to achieve a percentage result on the basis of projected enrollments; these enrollments will be rendered inaccurate by continued loss of white students. . . .
>
> It is an undeniable fact that desegregation cannot be accomplished without the presence of white students in the public schools. Surely it is not absolutely necessary for a community to watch more than 40% of its white students leave the public schools [to attend private academies] in the space of one year. Enrollment of white students in the system was 20,966 in September, 1969 and 12,095 in September, 1970.[13]

---

[12] These 1970-71 statistics are estimates accepted by the district court.

[13] *Jackson Municipal Separate School District* v. *Derek Jerome Singleton, cert. denied*, 402 U.S. 944 (1971); Petition for Writ of Certiorari, pp. 29-30.

The histories reviewed above are not exceptional. The pattern—public school desegregation followed by the withdrawal of a substantial number of white students to private academies and the resegregation of public schools —was repeated in school district after school district throughout the state.

III. *The State's Textbook Program.*

A. The Program Generally.

Sections 6634-6659.5 of the Miss. Code of 1942 (Appendix B, p. 27a et seq.), provide the framework for the selection, purchase and distribution of textbooks used in the state's schools. The laws were enacted in 1940 and amended, insignificantly, in 1942, 1944, 1946, 1960 and 1966. Prior to the initiation of the free textbook program, parents were required to purchase textbooks (§6511). Initially the Act provided textbooks for the elementary curriculum only; in 1942, the legislature extended the program to high school grades (§6658).

Sections 6634 and 6641 establish the Mississippi Textbook Purchasing Board and assign to that agency plenary authority over the state's multi-faceted program. Board members are the Governor, the State Superintendent of Education, and three others appointed by the Governor for terms of four years. The Board employs an Executive Secretary who serves as full-time administrator. All members of the Board and the Executive Secretary are appellees herein.

Textbooks may only be purchased "for use in those courses set up in the state course of study adopted by the State Board of Education, or courses established by special acts of the legislature" (§6646). For each such course of study there is a "rating committee" consisting of

educators, and other "persons competent in the appraisal of books" appointed by the Governor and State Superintendent of Education (§6641(d)). No textbook may be adopted or purchased by the appellees unless it is first approved by the responsible rating committee.

Once approved, textbooks are purchased under contracts between appellees and publishers at a price "not . . . higher than the lowest prices at which the same books are being sold elsewhere in the United States" (§6646(1)). The publishers are required to "maintain a depository at a place within Mississippi to be named by the Board [Jackson] where a stock of books sufficient to meet all reasonable and immediate demands [is] kept" (§6641(f)).

Appellees send to each school district (and now each private school)[14] requisition forms which list all textbooks available free through the state. The school district or private school completes the requisition form and returns it to the Purchasing Board where it is reviewed by the

---

[14] Prior to 1970 each County Superintendent of Education was required to requisition textbooks for all schools, *public and private*, geographically located within his county. The requisition was then approved by the Textbook Purchasing Board and thereafter shipment was made by the School Book Depository directly to the consignee specified by the County Superintendent of Education.

In 1970 Congress enacted the Emergency School Assistance Act appropriating funds to aid school districts converting to unitary systems. The act made it unlawful for any recipient to "engage . . . in the gift, lease or sale of real or personal property or services to a non-public elementary or secondary school or school system practicing discrimination on the basis of race, color or national origin." P.L. 91-381, 84 Stat. 806, U.S. Code Congressional and Administrative News, September 5, 1970, pp. 3318-3319. Public school officials wishing to participate in this federal program were forced to disassociate themselves from the private segregatist academies. As a result, the Textbook Board, in 1970, established new distribution regulations which eliminated County Superintendents as conduits for the distribution of textbooks to private academies. The distribution regulations are reproduced in the district court's opinion, footnote 2, Appendix A hereto, pp. 5a-6a.

Executive Secretary. After approval, the form is sent to the Textbook Depository in Jackson which fills the order and ships the textbooks directly to the school district or private school. All shipping charges are billed to the Textbook Purchasing Board (§§6648(f), [illegible]).

B. The Extent of Textbook Aid to Private Racially Segregated Academies.

Appendix D hereto (46a) lists the 107 academies which receive textbooks from the State of Mississippi and which were found by the district court to have been "formed throughout the state since the inception of public school desegregation."

During the 1970-71 school year these academies enrolled approximately 34,500 students and held 175,000 volumes costing the state of Mississippi approximately $490,000. The annual per pupil expenditure for new or replacement textbooks approximates $6.00, which will result in an annual recurring state expenditure for these academies of approximately $207,000.

The district court found that there are 8,000 students enrolled in an additional 41 private academies which do not, at this time, participate in the state's program. Accordingly, an additional $120,000 in initial inventories and $50,000.00 annually thereafter is available to private segregationist academies.[15]

---

[15] The Executive Secretary testified that the program was not administered strictly on a per pupil allotment basis. Rather, they sought to provide all textbooks needed and a school could exceed its allotment by merely requesting additional aid.

The Questions Presented Are Substantial

The decision of the court below upholds the action of the State of Mississippi in providing financial assistance to buy textbooks for pupils attending more than 100 racially segregated private schools which were formed to promote evasion of public school desegregation in the State. The court below held inapplicable prior precedents striking down as unconstitutional other forms of state aid to these same segregationist academies. The court below upheld the supplying of textbooks bought with tax money and distributed by state officials at these segregationist institutions on the ground that the state acted under a statute which had no racial motive, that the textbook aid was not essential to continued operation of the segregationist academies, and that similar aid had been held to be consistent with the Establishment of Religion Clause of the First Amendment. We believe that the first ground is legally insufficient. The second ground is both incorrect and legally irrelevant. The Constitution forbids all public support of school segregation. *Cooper* v. *Aaron*, 358 U.S. 1, 19 (1958). The third ground relating to the Establishment Clause is not decisive of the racial discrimination issues in this case under the Equal Protection Clause.

The State of Mississippi and all of its agencies must be guided by their "affirmative" and continuing duty to remedy the effect of past racial discrimination and convert school systems from dual to unitary operation. The provision of free textbooks to academies which drain public schools of white students and faculties and which thereby frustrate the attainment of fully integrated public schools is inconsistent with this paramount duty.

In *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430, 437-38, he Court was confronted with the very

argument relied upon by the court below. There the defendant school board asserted that its only duty under the Equal Protection Clause was to adopt a neutral stance and permit "every student regardless of race . . . [to] 'freely' choose the school he will attend." The Court held that the state could not remedy its long history of support and encouragement for racial segregation by standing neutrally aside. Rather, state agencies were charged with an "affirmative" duty to take whatever steps might be necessary to convert to a unitary system.[16]

This mandate which commands appellees to align themselves unequivocally with public integrated education was recently imposed upon the federal government in *Green* v. *Kennedy*, 309 F. Supp. 1127 (D. D.C. 1970), *appeal dismissed for want of jurisdiction, sub nom. Cannon* v. *Green*, 398 U.S. 956 (1970); and see *Green* v. *Connally*, 330 F. Supp. 1150 (D. D.C. 1971), *affirmed sub nom. Coit* v. *Green*, 404 U.S. 997 (1971). There the Court was confronted with mere indirect aid to private academies and with a neutral statute enacted without any discriminatory motive. The

---

[16] In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), the Court again relied upon the state's duty to form a meaningful remedy for past policies and practices of segregation, upholding the use of a variety of techniques aimed at uprooting an entrenched dual system. In *North Carolina Board of Education* v. *Swann*, 402 U.S. 43 (1971), a statute tending to interfere with the formulation of a remedy for racial segregation was held unconstitutional. And in *Wright* v. *Council of the City of Emporia*, 40 U.S.L. Week 4806, 4812, the Court held that "a new school district may not be created where its effect would be to impede the process of dismantling a dual system."

See also *United States* v. *Jefferson County Board of Education*, 372 F.2d 836, 869, *affirmed en banc*, 380 F.2d 385 (5th Cir. 1967):

> *"The only adequate redress for a previously overt system-wide policy of segregation directed against Negroes as a collective entity is a system-wide policy of integration"* (emphasis in original).

Court held on motion for preliminary injunction[17] that donations to segregationist academies of Mississippi could not be offset against income as charitable contributions for federal income tax purposes because:

> Where there is a showing, as here, that a dual system of segregated schools was established and maintained in the past either under State mandate or with substantial help from State involvement and support, the State and the school districts are under a *present, continuing and affirmative* duty to establish a "unitary, nonracial system of public education * * * a system without a 'white' school and a 'Negro' school, but just schools." * * * The Federal Government is not constitutionally free to frustrate the only constitutionally permissible state policy, of a unitary school system, by providing government support for endeavors to continue under private auspices the kind of racially segregated dual system that the state formerly supported. (*Green* v. *Kennedy*, 309 F. Supp. 1127 at 1137) (emphasis added)).

The affirmative duty of *Green* v. *County School Bd. of New Kent County, supra*, underlies the recent decisions of this Court holding unconstitutional legislation providing tuition grants for students attending private segregated academies. *Brown* v. *South Carolina Board of Education*, 296 F. Supp. 199 (D. S.C. 1968), *affirmed per curiam*, 393 U.S. 222 (1968); *Poindexter* v. *Louisiana Finance Commission*, 274 F. Supp. 833 (E.D. La. 1967), *affirmed per curiam*, 389 U.S. 571 (1968). See *Wallace* v. *U. S.*, 389 U.S. 215 (1967), *affirming Lee* v. *Macon County Bd. of Ed.*, 267

[17] The final decision reached the same result on statutory rather than constitutional grounds, but the decision has obvious strong constitutional overtones. See *Coit* v. *Green, supra*.

F. Supp. 458, 475 (M.D. Ala. 1967). And relying entirely upon this Court's decisions in *Brown* and *Poindexter*, a district court statted the rule of law in *Griffin* v. *State Board of Education*, 296 F. Supp. 1178, 1181 (E.D. Va. 1969):

> "[T]he validity of a tuition plan is to be tried on a severer issue:: whether the arrangement in *any* measure, no matter how slight, contributes to or permits continuance of segregated public school education.
>
> • • •
>
> To repeat, our translation of the imprimatur placed upon *Poindexter* by the final authority is that *any* assist *whatever* by the State towards provision of a racially segregated education, exceeds the pale of tolerance demarked by the Constitution." (Emphasis in original.)

Under this ~~test~~ test the Court held that the Virginia statutes were void:

> Indisputably, the State supplies the money; ~~income~~ it comes from the public treasury; it goes to individual residents who may expend it for a segregated classroom. Thus, the Virginia payments are made available to help in giving life to an educational forum decried by the Federal Constitution. . . .
>
> An absolute and unequivocal prohibition is the logical effectuation of the intendment flowing from the recent rulings of the Supreme Court. (*Griffin, supra*, at 1181.)

The courts have similarly outlawed a variety of other schemes in which public school properties were transferred to aid private racially segregated schools. See *Wright* v. *City of Brighton*,, 441 F.2d 447 (5th Cir), *cert. denied sub*

nom. Hoover Academy, Inc. v. *Wright*, 404 U.S. 915 (1971); *Aaron* v. *Cooper*, 261 F.2d 97 (8th Cir. 1958); *United States* v. *Hinds County School Board*, 433 F.2d 598 (5th Cir. 1969). *Accord: Blackwell* v. *Anguilla Line Consolidated School Dist.*, No. 28030 (5th Cir., Nov. 24, 1969) ("No abandoned school facility under this plan, if any, shall be used for private school purposes"); *United States* v. *Covington County School Dist.*, No. 28030 (5th Cir., Dec. 17, 1969) ("It is further ordered that the Lincoln Elementary School facility shall not be used, leased, or sold for private school purposes"); *Anderson* v. *Canton Municipal Separate School Dist. & Madison County School Dist.*, No. 28030 (5th Cir., Dec. 22, 1969) (rule to show cause why injunction should not issue); *Lemon* v. *Bossier Parish School Board*, Civ. No. 10,687 (W.D. La., Sept. 25, 1970) (granting injunction against use of public school athletic field for game between two private schools; field had been leased in Lions Club, sponsor of game).

The proper question then is whether state textbook aid to academies which interfered with, and in some cases rendered meaningless, the promise of fully integrated public schools, "hinders or furthers" [18] the dismantling of dual school systems. The question almost answers itself: textbook aid enables private academies operating on the "thinnest financial basis" (*Coffey* v. *State Educational Finance Commission*, 296 F. Supp. 1389, 1392 (S.D. Miss. 1969)) to avoid expending sums for a vital aspect of their educational program. It obviously aids the segregationist schemes to have textbooks selected, purchased, and distributed by the State. But whatever the extent of benefit, "state support of segregated schools through any arrange-

[18] See *Wright* v. *Council of the City of Emporia*, 40 U.S.L. Week 4806, 4809 ("Under the principles of *Green* and *Monroe*, such a proposal must be judged according to whether it hinders or furthers the process of school desegregation").

ment, management, funds or property cannot be squared with the [Fourteenth] Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws." *Cooper* v. *Aaron*, 358 U.S. 1, 19 (1958).

In the face of these authorities, the district court held:

> [T]he racial identity of the child had nothing to do with the original enactment of the Mississippi statute nor has it had anything to do with the receipt of a free textbook throughout a period of more than ~~70~~ 30 years. Every Mississippi school pupil, before and since 1954 . . . whether enrolled in public, private or parochial schools, of whatever race, has received the free textbooks without question or impediment. (Appendix A, 15a.)
>
> • • •
>
> It is plain . . . that the books have not been issued to the schools but to the students. As in the case of public schools, private and sectarian school authorities are held responsible for books as a matter of orderly administration. The statute does not authorize the distribution of books to schools, only to pupils. (Appendix A, 16a).
>
> • • •
>
> There is no showing that any child enrolled in private school, if deprived of free textbooks, would withdraw from private school and subsequently enroll in public schools now unitary. (Appendix A, p. 21a.)

The district court has thus upheld Mississippi's textbook legislation on the grounds that the statute is neutral on its face and devoid of any purpose to aid private segregationist academies. But this Court has made it abundantly clear

that state legislation and policy, especially in the field of education and in systems converted from dual to unitary operation, must be measured by its effect rather than its purpose:

> [A]n inquiry into the "dominant" motivation of school authorities is as irrelevant as it is fruitless. The mandate of *Brown II* was to desegregate schools and we have said that "the measure of any desegregation plan is its effectiveness." . . . Thus, we have focused upon the effect—not the purpose or motivation—of a school board's action in determining whether it is a permissible method of dismantling a dual system. The existence of a permissible purpose cannot sustain an action that has an impermissible effect. *Wright* v. *Council of the City of Emporia, supra,* 40 U.S. Law Week at 4810.

Similarly, the district court's reliance upon *Board of Education* v. *Allen,* 392 U.S. 236 (1968), is misplaced. All of the tuition grant legislation provided grants directly to students and not to schools and all such legislation has been held unconstitutional by this Court. Although the distinction between aid to a student and aid to a school may be relevant in the context of aid to parochial education and the First Amendment, it finds no support in the equal protection decisions of this Court. *Green* v. *Connally,* 330 F. Supp. 1150, 1167-1169 (D. D.C. 1971), *affirmed sub nom. Coit* v. Green, 404 U.S. 997 (1971).

The Court's inquiry in the *Allen* case was properly addressed to whether state textbook aid was impermissible state aid to a church school and thus was an establishment of religion or whether it was merely state aid to individual students. But such an inquiry is not helpful here since Mississippi cannot constitutionally help either schools or

pupils maintain or attend racially segregated schools with tax money. *Cooper* v. *Aaron*, 358 U.S. 1, 19 (1958). Mr. Justice White pointed to the difference between considerations involved in establishment of religion cases and racial discrimination cases in his concurring opinion in *Lemon* v. *Kurtzman*, 403 U.S. 602, 671, n. 2 (1971):

> As a postscript I should note that both the federal and state cases are decided on specified Establishment Clause considerations, without reaching the questions that would be presented if the evidence in any of these cases showed that any of the involved schools restricted entry on racial or religious grounds or required all students gaining admission to receive instruction in the tenets of a particular faith. For myself, if such proof were made, the legislation would to that extent be unconstitutional.

Finally, the district court's holding requiring appellants to prove textbook aid vital to segregationist academies imposes an impossible burden of proof. For neither in the tuition grant or the tax exemption cases was there any evidence that whites would return to public schools if only tuition grants or tax benefits were withdrawn. And since the private academies have grown in number and size recently, rather than retreated, the standard approved by the district court would argue for the restoration of tuition grants and tax benefits to the academies of Mississippi. The absurdity of this result and the authorities cited above are sufficient answer to the standard the district court would impose upon plaintiffs in cases such as this.

The need to provide an effective remedy for the state's historic alignment with racial segregation leads us to still another fundamental principle controlling in this case:

> The constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown* case can neither be nullified openly and directly by state legislators or state executive officers, nor nullified by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously." *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958).

One such "ingenious or ingenuous" method used by states to circumvent their duty under *Brown*, is to support private persons in efforts which they cannot directly undertake. Such a scheme was at the foundation of an Alabama tuition grant statute and resulted in a holding that "it is axiomatic that a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish." *Lee* v. *Macon County Board of Education*, 267 F. Supp. 458, 475-76 (M.D. Ala. 1967), affirmed *sub nom. Wallace* v. *United States*, 389 U.S. 215 (1967). It should be axiomatic that the State of Mississippi, restrained from directly operating a segregated school system, cannot give financial support or basic educational resources—textbooks—to privately operated segregated schools. *Cooper* v. *Aaron*, 358 U.S. 1 (1958).

CONCLUSION

For the foregoing reasons probable jurisdiction should be noted, and the judgment below should be reversed.

Respectfully submitted,

MELVYN R. LEVENTHAL
FRED L. BANKS, JR.
REUBEN V. ANDERSON
538½ North Farish Street
Jackson, Miss. 39202

JACK GREENBERG
JAMES M. NABRIT, III
NORMAN J. CHACHKIN
CHARLES STEPHEN RALSTON
10 Columbus Circle
New York, New York 10019

Attorneys for Appellants